PRINCIPLES OF ADMINISTRATION OF JUSTICE: ANALYSIS OF LAW AND PRACTICE IN TANZANIA

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CERTIFICATION

The undersigned certifies that she has read and hereby recommends for acceptance by The Open University of Tanzania a dissertation entitled, **"Principles of Administration of Justice: Analysis of Law and Practice in Tanzania",** in partial fulfilment of the requirements for the award of Degree of Masters of Laws (LL. M).

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DECLARATION

I, **Abel Mathias Ngilangwa,** declare that the work presented in this dissertation is original. It has never been presented to any other University or Institution. Where other people's works have been used, references have been provided. It is in this regard that I declare this work as original mine. It is hereby presented in partial fulfilment of the requirement for the Degree of Masters of Law.

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Signature

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Date

DEDICATION

To the only almighty, our God who is the source of wisdom; in whom dwell the true hope, meaning, and destiny of our human life. In addition, I sincerely dedicate my research to my beloved wife and my family for their nice cooperation and assistance during my studies.

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ABSTRACT

The study aimed to examine the principles governing the administration of justice in Tanzania, their practical implementation, and their impact on ensuring fairness, impartiality, and access to justice for all individuals within the legal system. The research methodology used in this study was doctrinal legal research, which involves examining primary and secondary sources of law to understand the certainty, consistency, and continuity of these principles and their practical implementation. The study critically examines both primary and secondary sources of law to gain insights into the administration of justice in Tanzania. Primary sources include legislation, constitutional provisions, and judicial decisions, while secondary sources include legal commentaries, academic articles, and reports. By analysing these sources, the study identified defects in the principles governing the administration of justice in Tanzania, whether in their statutory incorporation or in their practical application. The findings of the study reveal that the principles governing the administration of justice in mainland Tanzania suffer from defects. These defects can be either in their statutory incorporation, meaning that the laws themselves are inadequate or unclear, or in their practical application, meaning that they are not consistently or effectively implemented. These defects give rise to various challenges in the administration of justice, such as delays in court proceedings, lack of access to justice for marginalized groups, and corruption within the legal system. Based on these findings, the study recommends the need for statutory amendments and practical approaches to enhance the administration of justice in Tanzania by revising existing laws or enacting new legislation to address the defects identified in the principles governing the administration of justice and improving the training and capacity-building of judicial officers and court staff, implementing technology solutions to streamline court processes, and promoting transparency and accountability within the legal system. Thus, this study provides valuable insights into the administration of justice in Tanzania and highlights the need for reforms to address the challenges identified. By addressing these defects and implementing the recommended changes, Tanzania can enhance the administration of justice and ensure that its legal system operates in a fair, efficient, and effective manner.

TABLE OF CONTENTS

LIST OF STATUTES

Principal Legislation

The Appellate Jurisdiction Act, Cap 141 R.E. 2019

The Civil Procedure Code, Cap 33 R.E. 2019

The Constitution of the United Republic of Tanzania of 1977 as amended

The Criminal Procedure Act, Cap 20 R.E. 2022

The Legal Aid Act, Cap 21 R.E. 2019

The Magistrates Courts Act, Cap 11 R.E. 2019

Subsidiary Legislation

The Magistrates Courts Civil Procedure in Primary Court Rules, G. N. No. 310 of 1964 as amended by G.N. No. 119 of 1983

The Tanzania Court of Appeal Rules, G.N. 368 of 2009 as revised by G.N. 344 of 2019

LIST OF CASES

Tanzania's Cases

Cases from Other Jurisdictions

LIST OF ABBREVIATIONS

Art	Article
CAP	Chapter
CAT	Court of Appeal of Tanzania
G.N.	Government Notice
HC	High Court
Misc.	Miscellaneous
R.E.	Revised Edition
S	Section
TLR	Tanzania Law Report
URT	United Republic of Tanzania

CHAPTER ONE

INTRODUCTION AND BACKGROUND TO THE PROBLEM

1.0 Introduction

The administration of justice is an important facet of national, regional, and international development. It forms part of the international agenda for the sake of sustainable and inclusive development in the world. The international community has established legal standards through conventions, guidelines, declarations, and recommendations. It creates and maintains a settled society because it upholds the rule of law in a democratic society through recognition, protection, and enforcement of freedoms, rights, and duties.[1] The effective administration of justice has been in high demand in many countries because of its utility to achieve personal and societal development goals.[2] Nevertheless, the administration of justice in any country has never been perfect because numerous challenges impede the judicial system upon dealing with the administration of justice. The challenges have different roots. The focus of this research is to explore legal and practical challenges. [3]

The judicial system in Tanzania faces numerous legal and practical challenges in the administration of justice.[4] Despite various efforts to reform the system, including the adoption of new laws and policies, there are still significant obstacles that impede access to justice, the efficient functioning of the courts, and the protection of human rights. Some of these challenges include inadequate resources and funding, a

[1] Pound, R, 'The administration of justice in the modern city' (1913) 26(4) Harvard Law Review 302.
[2] Malcolm M Feeley, 'Two models of the criminal justice system: An organizational perspective' (1973) 7(3) Law & Society Review 407.
[3] Roscoe Pound, 'Justice according to law' (1913) 13 Columbia Law Review 696.
[4] Insufficient infrastructure was observed in over 40% of primary courts, according to a Legal Service facility study from 2014. It mentions that many courts lack necessary infrastructure and amenities including courtrooms, workstations, and records management programs. Furthermore, according to a 2013 Afro barometer survey, 66% of Tanzanians believe that some or most judges and magistrates are corrupt.

shortage of qualified judges and lawyers, delays and inefficiencies in the court system, corruption, and a lack of public trust and confidence in the judiciary.[5] These issues have a detrimental impact on the delivery of justice in Tanzania, and addressing them will require sustained efforts and commitment from all stakeholders, including the government, the judiciary, civil society organizations, and the public.[6] This research intends to explore legal and practical challenges the judicial system encounters when administering justice and suggest the way forward for ascertaining the challenges is a huge step to national, regional, and international efforts towards the improvement of the judicial system as well as realising the effective administration of justice.

1.1 Background to the Problem

The principles on the administration of justice form the bedrock of any legal system, ensuring fairness, equity, and access to justice for all individuals. In Tanzania, as in many other countries, the administration of justice plays a crucial role in maintaining the rule of law and upholding the rights of its citizens. However, the effectiveness and efficiency of the administration of justice in Tanzania have been subject to scrutiny and critique.

The administration of justice in Tanzania is based on the principles of the rule of law, equality before the law, and due process. These principles are enshrined in the

[5] R.M. Bierwagen and C.M. Peter, 'Administration of justice in Tanzania and Zanzibar: a comparison of two judicial systems in one country' (1989) 38(2) International & Comparative Law Quarterly 395.
[6] A.N. Mwakajinga, 'Court Administration and Doing Justice in Tanzania' in Access to Justice (Brill 2002) 231.

Constitution of Tanzania, which guarantees the right to a fair trial for all citizens.[7] Moreover, the principles on the administration of justice subject to this study are overriding objective, limitation, ouster and finality clauses, legal representation, speed tracks, and impartiality. They are enshrined under article 107A (2) of the Constitution of the United Republic of Tanzania of 1977.

To understand the current state of the administration of justice in Tanzania, it is important to consider its historical development. Tanzania has been undergoing significant legal and economic changes since its independence in 1961. The legal system is a mixture of different systems. For instance, Tanzania's legal system contains elements of substance of common law, doctrines of equity, and statutes of general application through the reception clause under section 2(3) of the Judicature and Application of laws Act[8]. Nevertheless, the application of common law, doctrines of equity, and statutes of general application is subject to prescribed conditions. The conditions are there must be lacunae in Tanzania's laws as to the matter at hand as well as the circumstances of Tanzania must permit the applicability of the common law, doctrines of equity and statutes of general application. Besides, Tanzania's legal system has some elements of African customary laws. Section 11 of the Judicature and Application of Laws Act[9] allows the applicability of customary laws in Tanzania. However, it denotes that applicability of customary laws is subject to certain limitations. One of the limitations is that customary laws will apply to

[7] The Constitution of the United Republic of Tanzania of 1977 as amended under Article 13(6) guarantees the right to a fair trial. It states that people have the right to a fair hearing and to appeal judicial rulings. No one charged with a criminal offense is considered guilty unless proven guilty, and no punishment is worse than the law's current penalty. In criminal investigations, processes, and sentence execution, human dignity is preserved, and no one is subjected to torture or brutal punishment.

[8] Cap 358 R.E. 2019

[9] Ibid

matters of civil nature hence we cannot apply them to criminal matters. Another customary laws are applicable to members of the same community or members of different communities having the same customary rules. Next, customary laws are applicable but they should not be repugnant to the constitution and written laws of the land.[10] The Tanzania Court of Appeal has emphasized that point with all the command at disposal in the case of *Maagwi Kimito* v *Gibano Werema*[11] where the Court of Appeal of Tanzania considered the place of customary laws in Tanzania generally and the propriety of the High Court decision. The Court of Appeal of Tanzania had this observe 'The customary laws of this country now have the same status in our courts as any other law subject only to the Constitution and any statutory law that may provide to the contrary'. Moreover, the Islamic laws form part and parcel of Tanzania's legal system through section proviso of section 11(1) paragraph (ii) of the Judicature and Application of Laws Act.[12]

The administration of justice in Tanzania is governed by a complex web of legislation, including the Constitution of the United Republic of Tanzania, the Judicature and Application of Laws Act, and various other statutes, regulations, and rules. These legal provisions outline the structure of the judiciary, the powers and functions of courts, and the rights and obligations of the parties involved in legal proceedings. However, despite the existence of a comprehensive legal framework, its effective implementation and adherence to the principles of justice can be hindered

[10] The Judicature and Application of Laws Act, proviso of section 11(3) subjects the application of customary law in the sense that the court shall not apply any rule or practice of customary law which is abolished, prohibited, punishable, declared unlawful or expressly or impliedly disapplied or superseded by any written law.

[11] [1985] TLR 132 (CA)

[12] The Judicature and Application of laws Act, section 11(1) proviso paragraph (ii) allows the applicability of Islamic law to some matters in the country. It states that nothing in this subsection shall preclude any court from applying the rules of Islamic law in matters of marriage, divorce, guardianship, inheritance, wakf and similar matters in relation to that law.

by various challenges emanating either from the legal setup, judicial set or practical application of the principles governing the administration of justice in Tanzania.

For example, the Court of Appeal of Tanzania has demonstrated inconsistent application of the overriding objective principle in cases such as *Gaspar Peter* v *Mtwara Urban Water Supply Authority*[13] and *Mondorosi Village Council and 2 Others* v *Tanzania Breweries Limited* and 4 *Others*[14]. This inconsistency poses a dilemma for lower courts when attempting to apply the same principle. Furthermore, no specific rules have been established to ensure compliance with the overriding objective principle, as mandated by section 3B (3) of the Civil Procedure Code. Additionally, the statutory overriding objective principle is not explicitly included in the Magistrates Courts Civil Procedure in Primary Courts Rules or the Criminal Procedure Act. This absence creates uncertainty regarding its application in primary courts and criminal proceedings, respectively.

This study aims to investigate the challenges and complexities surrounding the principles and their practices on the administration of justice in Tanzania, examining the legal framework, its practical implementation, and the impact on access to justice for Tanzanian citizens. Against this backdrop, the primary objective of this study is to critically analyse the principles on the administration of justice in Tanzania. The study will examine the legal framework, its practical implementation, and the resulting challenges and complexities. By doing so, it aims to provide valuable insights into the areas that require improvement, potential solutions, and recommendations to enhance the administration of justice in Tanzania.

[13] Civil Appeal No. 35 of 2017 (Unreported), at p. 13.
[14] Civil Appeal No. 66 of 2017 (Unreported), at p. 14.

Besides, the study contributes to the existing literature on the administration of justice in Tanzania by providing a comprehensive and comparative study of its principles, law, and practice in Mainland Tanzania. It will also offer practical recommendations for improving the administration of justice in both systems, based on evidence-based findings and best practices from other jurisdictions. The study is useful for policymakers, practitioners, academics, and students who are interested in understanding and enhancing the administration of justice in Tanzania.

1.2 Statement of the Problem

The administration of justice in Tanzania is facing several legal and practical challenges. These challenges include delays in the justice system, the cost of accessing the justice system, the inaccessibility of the justice system, and corruption in the justice system.[15] The challenges emanate from the principles governing the administration of justice.[16] Some of the principles governing the administration of justice subject of the concern of this study are overriding objective, limitation, ouster and finality clauses, legal representation, speed tracks, and impartiality.

The way principles are set up in the law as well as the way they are made in practice contributes to the challenges facing the administration of justice in Tanzania. These principles are established under article 107A (2) of the Constitution of the United Republic of Tanzania of 1977 as amended, section 3A of the Appellate Jurisdiction Act, sections 3A and 3B of the Civil Procedure Code and section 33 of the Magistrates Courts Act and rules 31, 32 and 33 of the Court of Appeal of Tanzania as

[15] E, Sanga, 'Challenges of Access to Justice in Tanzania to Obtain Legal Assistance for Street Children Facing Physical Violence by Police' (2014)

[16] RR, Kuehn,'Undermining Justice: The Legal Profession's Role in Restricting Access to Legal Representation' (University of Alabama School of Law Legal Studies Research Paper Series, 2007)

amended in 2019. In decisions such as *Gaspar Peter* v *Mtwara Urban Water Supply Authority*[17] and *Mondorosi Village Council and 2 Others* v *TBL and 4 Others*[18], the overriding purpose concept was applied inconsistently. When lesser courts seek to apply the same concept, this discrepancy creates a quandary. Furthermore, no explicit procedures have been developed to assure conformity with the overarching aim concept, as required by Civil Procedure Code section 3B (3). Furthermore, the statutory overriding goal principle is not expressly stated in the Magistrates Courts Civil Procedure Rules or the Criminal Procedure Act. This omission raises concerns about its use in primary courts and criminal procedures.

These challenges can have a significant impact on the lives of people in Tanzania, making it difficult for them to get justice when they need it. These challenges have created obstacles that hinder the smooth functioning of the justice system and undermine its ability to provide fair and efficient outcomes. Research on the principles for the administration of justice in Tanzania can help to identify the root causes of these challenges and to develop solutions that can help to improve the administration of justice in Tanzania.

Therefore, this research aims to address the examination of the principles for the administration of justice in Tanzania, considering both the existing laws and their practical implementation. The research seeks to identify and analyze the legal and practical challenges that impact the effective administration of justice in Tanzania's legal system. By conducting a comprehensive review of the relevant laws and assessing their implementation in practice, the research aims to provide insights into

[17] Supra fn 11
[18] Supra fn 12

the key issues and obstacles faced by the administration of justice in Tanzania. This will contribute to a better understanding of the current state of the justice system and provide potential recommendations for improvement in order to ensure fair and efficient administration of justice in Tanzania.

1.3 Research Objectives

1.3.1 General Objective

The main objective of this research is to examine the manner and the extent to which the principles of administration of justice are statutorily incorporated and implemented in the Tanzanian judicial practice.

1.3.2 Specific Objectives

i) To ascertain key principles that govern the administration of justice in Tanzania's judicial system and analyse how they are incorporated into the current legal frameworks.

ii) To assess the practical application of principles governing the administration of justice in the day-to-day functioning of Tanzania's courts.

iii)To identify challenges, gaps, ambiguities, and inconsistencies in the legal frameworks and practical implementation of the principles of the administration of justice.

1.4 Research Questions

i) What are the key principles that govern the administration of justice in Tanzania's judicial system and how are they incorporated in the current legal frameworks?

ii) To what extent and how are the principles of the administration of justice applied in the day-to-day functioning of Tanzania's courts?

iii)What are the challenges, gaps, ambiguities, and inconsistencies in the legal frameworks and practical implementation of the principles of the administration of justice in Tanzania, and how do they affect the quality, efficiency, and fairness of the judicial process?

1.5 Significance of Research

The research at hand has something to offer to the existing knowledge base of the justice sector for the sake of the improvement. It has utilities to different stakeholders of the justice sector in the country. Some of the useful contributions that the study will offer upon its successful undertaking are as follows –

Firstly, it offers academic utility in the sense that it provides intriguing insights into the legal and practical challenges facing the judicial system in the administration of justice with a special focus on the Court of Appeal of Tanzania.

Another, the study adds value to legal and policy reformation. Since it explores legal and practical challenges facing the judicial system in the administration of justice critically, this study provides an avenue to restructure the legal and policy frameworks to entail the important aspects of the justice administration. It provides areas of amendment, repeal, or new enactment in the existing legal and policy setups in relation to the justice administration in Tanzania.

Next, as this study gathers knowledge for the sake of knowledge, it provides knowledge for the judicial officers in the proper interpretation of the principles associated with the administration of justice. As the judiciary is responsible for the

interpretation of the statutory enactments, the judicial organ may use this research to understand various approaches that may be employed in the interpretation and construction of the judicial administration of justice.

1.6 Literature Review

A good number of legal scholars speak of the principles governing the administration of justice in terms of their statutory enactment or practical application. However, the scholars have not linked between statutory incorporation of the principle and its practical application in the administration of justice which justifies the undertaking of this study. Moreover, the existing study have not linked the key principles, their incorporation, their application and the way they affect the administration of justice.

FB attorneys[19],in the article titled 'Inconsistent application of overriding principles at Court of Appeal', portray the application of the overriding principle. The authors depict three important issues worthy of understanding. The first is the principle itself. The authors state that it is principle of just, expeditious, proportionate and affordable resolution of disputes introduced in laws.[20] The second is the purpose of the oxygen principle by postulating that oxygen principle meant to reduce red tape on procedural laws in Court.[21] The third is application of the principle showing that interpretation evolving but inconsistent application.[22]This kind of literature contributes to the exploration of the problematic areas at the court of appeal of Tanzania in the

[19]FB Attorneys, 'Inconsistent application of overriding principles at Court of Appeal' (Legal Update 2019) https://fbattorneys.co.tz/inconsistent-application-of-overriding-principles-at-court-of-appeal/ accessed 24 May 2022.

[20] The Written Laws (Miscellaneous Amendments) (No.3) Act, 2018, Act No. 8 of 2018

[21] MM Mzee and AA Othman, 'Improving Tanzanian Courts' Procedures in Adjudicating Islamic Banking Disputes: A Way Forward' (2022) 39(1) Journal of Islamic Banking & Finance.

[22]EN Musembi, 'Due regard versus undue regard to procedural technicalities: the civil procedural tug-of-war' (Doctoral dissertation, Strathmore University 2018).

administration of justice.[23]Inter alia, the authors show that inconsistent application of the overriding principle may bring the unintended results of miscarriage of justice.[24] The authors show that the purpose of the principle was to reduce technicalities and focus on the merits of the case.[25]

Besides, Mwakajinga[26]., describes the role of court in administration of justice through his paper titled 'Court Administration and Doing Justice in Tanzania'. The paper illustrates how the public view of the court staff is essential to achieving justice and how political influence on the judicial staff can sometimes be corrected.[27] It draws parallels between the popular participation in pre-colonial non-state dispute settlement with contemporary popular participation in state judicial settlement of disputes, but raises doubt as to whether this is an efficient means of inculcating the rule of law in the public's mind.[28]The paper contributes to the study of role of judicial system as it discusses what the judicial role is there in administration of justice in Tanzania as it shares the relationship between court administration and administration of justice. Hence, the literature shares some great deal with the study at hand but with different perspectives and extent of the coverage of the

[23]G Sundet, 'Public expenditure and service delivery monitoring in Tanzania: Some international best practices and a discussion of present and planned Tanzanian initiatives' (Dar es Salaam: United States Agency for International Development (USAID) 2004)

[24]SJ Wanjala, 'Substantive justice over procedural Law in Kenya; gains under the 2010 constitutional dispensation' (2017).

[25] G Hyden and B Karlstrom, 'Structural adjustment as a policy process: The case of Tanzania' (1993) 21(9) World Development 1395.

[26]AN Mwakajinga, 'Court Administration and Doing Justice in Tanzania' in Access to Justice (Brill 2002) 231.

[27]AN Lyamuya, 'The Administrative Judicial Personnel and Court Process: Their Role in the Collection of Evidence and Execution of Judgements in Tanzania Mainland' in Access to Justice (Brill 2002) 215.

[28] FR Khalfan, 'Legal aspects of language barrier in Mainland Tanzanian courts' (Doctoral dissertation, The Open University of Tanzania 2018).

administration of justice in Tanzania.[29] The study at hand uses the court of appeal of Tanzania as a leader and how it exemplifies in the administration of justice in the country.[30]

Moreover, Maina and Kijo-Bisimba[31], in 'Law and Justice in Tanzania: Quarter of a Century of the Court of Appeal' share a great deal of assessment of the what the court of appeal of Tanzania has done since its establishment. The authors show that so far so good, the court of appeal of Tanzania has shown positive contribution to the jurisprudence of Tanzania. On the other hand, the authors show where problems exist in the administration of justice. The examples given are technicalities versus justice, rules of procedures at the court of appeal and many others. The authors have done a tremendous work in building the existing knowledge on the court of appeal of Tanzania and what it has done. Hence, their work is relevant in undertaking this study because of conceptual and foundational bases. It lays the ground work for the current study because the study begins where they left in assessing the work of the court of appeal in the administration of justice.

Furthermore, Mzee and Othman[32],through 'Improving Tanzanian Courts' Procedures in Adjudicating Islamic Banking Disputes: A Way Forward' explore the court procedures in adjudicating Islamic banking disputes. The authors state 'in administering of justice, the court is required to observe procedural laws which are derived from constitution, statute, rules, and cases. However, none of these sources

[29] M Issa and J Wamukoya, 'The Role of Electronic Records Management in Promoting the Delivery of Justice in Tanzania: Perspectives from Dar Es Salaam Commercial Court' (2018) 8(2) Information and Knowledge Management 30.
[30]RM Bierwagen and CM Peter, 'Administration of justice in Tanzania and Zanzibar: a comparison of two judicial systems in one country' (1989) 38(2) International & Comparative Law Quarterly 395.
[31] CM Peter and H Kijo-Bisimba (eds), ft 22
[32] MM Mzee and AA Othman, ft 26

provide court procedures for judiciary settlement of Islamic banking disputes. The contention indicates the lacunae of laws in handling the Islamic banking disputes in the country. The foregoing article is relevant as it shows the silence of our laws when it comes to matters of Islamic banking in the country.

Another interesting legal commentary for review belongs to Ngaiza and Omar[33]with title 'Access to Justice by Victims of Violence Against Women and Girls in Tanzania: A Social Legal Perspective' the authors underscore the need for ensuring access to justice for victims of violence requires resolute efforts to change some of the socio-cultural challenges that go back in history.[34] The authors reveal that laws and policies are a not a problem to access to justice but socio-cultural challenges.[35]The literature contributes to the exploration of role of judicial system through examining accessibility to justice by victims of violence in the country.[36] There may be some difference of comments on the reasoning because even the judicial system has some problems as far as dispensation of justice to victims of violence and many others.[37] This divergence necessitates the study at hand to explore on the judicial system and its role of administration of justice in the country. Henceforth, the research at hand goes different side of the argument raised on the

[33]C Ngaiza and A Omari, 'Access to Justice by Victims of Violence Against Women and Girls in Tanzania: A Social Legal Perspective' in Violence Against Women and Criminal Justice in Africa: Volume I (Palgrave Macmillan 2022) 351.

[34] Monica Mhoja and Hellen-KijoBisimba, 'Tanzanian Customary Laws of Inheritance: A Case of Cultural Violence Against Women' in LudgeraKlempf (ed) Women Challenging Violence: Experiences from Eastern and Southern Africa (1994) 2.

[35] Committee on the Elimination of Discrimination against Women, General recommendation No 35 on Gender-Based Violence against Women, Updating General Recommendation No 19 (2017) 5–6.

[36] Ibid

[37] Tanzania Women Lawyers Association (TAWLA), Review of Laws and Policies Related to Gender Based Violence of Tanzania Mainland (2014).

authorship above to explore role of the court system in the administration of justice trying to see whether it is effective enough for the purpose.[38]

Additionally, in his doctoral dissertation focusing on dismissal of cases on legal technicalities versus substantive justice, Birea[39] discusses two important aspects which form one of the subject matters of the present study. Birea identifies the constitutional requirement of not being tied up by technicalities when delivering criminal and civil justice in the country. Birea finds that contrary to what the constitutional requirement prescribes, the practice shows that the court of appeal of Tanzania relies on the technicalities to strike out cases. Birea identifies that it has brought about several immeasurable impacts on rights of individuals in terms of costs, time, resources and mental disturbance among litigants to mention few.

Birea's thesis is vital in understanding the core problem of which stands between the legal technicalities and substantive justice when the court of appeal hears and determines matters before it. It shows the extent of the problem which necessitates the study to be undertaken to check whether the practice has changed the trend of the legal technicalities' compliance since 2014 when the thesis was written. A further study may be undertaken because there is a change of the law to introduce the oxygen principle to require the adherence to the overriding principle when handling the matters before the court of appeal of Tanzania. Hence, the thesis triggers a further study to know whether the problem persist or not. Nonetheless, the research centres on the problem of legal technicalities in the administration of justice.

[38] International Council on Human Rights Policy, When Legal Worlds Overlap: Human Rights, State and Non-State Law (2009) 73.
[39] A Beria, supra, ft 23

Furthermore, Nyalusi[40] explores procedures of civil procedure to the court of appeal of Tanzania in his paper titled 'A Synopsis of the Procedures for Civil Appeals to the Court of Appeal of Tanzania: Practical Perspectives.' In the paper, Nyalusi discusses the procedures to be undertaken for civil appeals to the Court of appeal of Tanzania a practical perspective. Moreover, Nyalusi covers appeals in Land, Labour and normal civil suits, procedures, necessary documents, and timing for each step will be discussed. Nyalusi underscores the understanding on how to go about with the civil appeals to the court of appeal of Tanzania.

1.7 Research Methodology

Research methodology is not only a study of methods but also of explanation and justification for using certain research methods and of the methods themselves.[41] It includes in it the philosophy and practice of the whole research process.[42] In other words, research methodology is a set of rules of procedures about the way of conducting research.[43] It includes in it not just a compilation of various research methods but also the rules for their application and validity.[44]

i) Research Design and Approach

A doctrinal legal research design was appropriate, involving critical analysis of primary legal sources including statutes and regulations as well as secondary sources

[40]BP Nyalusi, 'A Synopsis of the Procedures for Civil Appeals to the Court of Appeal of Tanzania: Practical Perspectives' (TLS Iringa Chapter Meeting 10th September 2020).
[41] TR Tyler, 'Methodology in legal research' (2017) 13 Utrecht Law Review 130.
[42] T Hutchinson and N Duncan, 'Defining and describing what we do: Doctrinal legal research' (2012) 17 Deakin Law Review 83.
[43]C Cnossen and VM Smith, 'Developing legal research methodology to meet the challenge of new technologies' (1997) 2 The Journal of Information, Law and Technology.
[44]K Vibhute and F Aynale, Legal Research Methods: Teaching Material (2009) 26.

such as academic/policy literature. Also, the study should utilize a qualitative approach to gain in-depth understanding of principles in legal frameworks and practical implementation challenges. Thus, this doctrinal, qualitative approach will provide tools to systematically analyse the legal landscape around justice administration and experiential insights into on-the-ground implementation.

i) Doctrinal Legal Research

The researcher used *doctrinal legal research*. Doctrinal research is the most common methodology employed by those undertaking research in law. It entailed the use of primary and secondary sources of law. The primary sources of law are statutes and case law. The secondary sources include reports, journal articles, text books and other forms of publication.

Doctrinal research asks what the law is on a particular issue or context.[45] It is concerned with analysis of the legal doctrine and how it has been developed and applied.[46] This type of research is also known as pure theoretical research or black letter research.[47]

Under doctrinal methodology, a researcher's main goal has been the analysis of statutes, cases, reports, publications, and model laws as they relate to the subject matter under scrutiny. This methodology entailed the use of various legal methods such as rules of statutory legal interpretations and legal reasoning both inductive and deductive in order to critically analyse the materials collected against the backdrop of the research questions.

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[45] T Hutchinson and N Duncan, supra, ft 47

[46] A Kharel, 'Doctrinal legal research' (2018) Available at SSRN 3130525.

[47] JB Vranken, 'Methodology of legal doctrinal research: A comment on Westerman' in Methodologies of Legal Research: Which Kind of Method for What Kind of Discipline? (2011) 111.

a) **Methods**

The researcher used a *documentary review*. The documentary review is the content analysis involving studying existing information recorded in media, text, and physical items. The documentary review enabled the researcher to collect data from the existing documents having facts, opinions, evidence, and commentaries about the research topic. With this method, the researcher reviewed both primary sources and secondary sources. It enabled the researcher to review both public and private documents under the consent of the owner.

In using the documentary review, the researcher ascertained both primary and secondary sources of law. Then after, the researcher made a content analysis of the primary sources of law such as the international conventions, the constitution, principal legislation, subsidiary legislation, and precedents about the court of appeal of Tanzania. Thereafter, the researcher made the content analysis of the secondary sources of law such as legal commentaries and treatises such as articles, papers, reports, books, book reviews, and case reviews about the roles of the court of appeal of Tanzania.

b) Data Analysis

After data collection, the researcher analysed data. On data collected via documentary review, the researcher made a textual analysis of the secondary sources of the facts, opinions, and commentaries made by other authors. In addition, the researcher analysed the primary sources of laws on the roles of the Court of Appeal of Tanzania. In making data analysis, the researcher analysed the data thematically. The researcher analysed thematically by breaking the main theme into different sub-

themes to cover the discoveries on the roles of the court of appeal in the administration of justice in Tanzania.

1.8 Organisation of Dissertation

The study is organized into six chapters, each with its distinct theme. Chapter one establishes the research problem, context, and justification of the study with a general introduction. Chapter two is dealing with principles and theories relating to the administration of justice. Chapter three examines the national legal and institutional frameworks governing the administration of justice in Tanzania. Chapter four examines international legal instruments and institutions dealing with the administration of justice. Chapter five presents and analyses the research findings in line with the research questions and objectives The last chapter encompasses the conclusive remarks and recommendations.

1.9 Scope of the Study

The scope of this study is limited to examining the principles governing the administration of justice in Tanzania's judicial system. Specifically, the study focuses on identifying the key principles, analyzing how they are incorporated into current legal frameworks, assessing how they are applied in practice in the day-to-day functioning of Tanzanian courts, and determining challenges, gaps, ambiguities, and inconsistencies in the frameworks and implementation.

The study is confined to the principles and practices related to the administration of justice within the judicial branch. It does not extend to a broader examination of the entire justice system, including law enforcement, corrections, legal education, etc.

The time scope is limited to analyzing the current legal frameworks and contemporary judicial practices. The historical evolution of the principles and systems will not be examined.

The jurisdictional scope concentrates on national-level principles and practices. Sub-national or regional variations will not be studied however international law may be considered to understand the principles governing the administration of justice.

The substantive scope focuses on procedural and operational principles guiding the administration of justice such as legal representation, speed tracks of cases, overriding objective, limitation of rights and freedoms, ouster, and finality principles. Hence, substantive principles of law and justice will not be addressed.

Therefore, the study focuses on the Tanzanian context, considering the legal, social, and institutional aspects affecting the administration of justice, with an aim to provide insights and potential solutions for improving the functioning and effectiveness of the judicial system in line with the established principles of justice administration.

1.10 Conclusion

In this chapter, it is shown that throughout the world, there are aspirations and needs for effective administration of justice. The administration of justice becomes effective when it stems from principles. These principles are enshrined in different legal instruments at the international, regional, and national levels. The concerns about the administration of justice arise from the legal existence of the principles in the instruments as well as their legal practices. The way principles are set out in the

instruments as well as the way they are carried into effect may vitiate the administration of justice. Therefore, the study aimed at examining the principles governing the administration of justice from legal and practical aspects to understand where the challenges of the administration of justice come from in Tanzania. Henceforth, the researcher in this first chapter argues that the study is justifiable and important because the principles of administration of justice are important to ensure effectiveness, and the effectiveness of administration of justice is important for socio-economic development.

CHAPTER TWO

PRINCIPLES AND THEORIES RELATING TO THE ADMINISTRATION OF JUSTICE

2.0 Introduction

The administration of justice refers to the procedures and institutions involved in resolving legal disputes and upholding the rule of law. Certain foundational principles are recognised as essential to ensuring fair, equitable, and accessible justice administration. This chapter will examine key principles including the rule of law, separation of powers, judicial independence, and access to justice. Relevant theories like procedural justice and critical legal studies will also be explored for the perspectives they offer on fair processes and systemic inequities. The principles and theories will be contextualized in terms of Tanzania's justice system. This background will inform later analysis of specific legal and practical challenges facing justice administration in the Tanzanian context.

2.1 Key Principles Relating to Administration of Justice

Tanzania's 1977 Constitution encodes principles like separation of powers, judicial authority, and the rule of law. However, substantive protections remain inadequate. Legislation also upholds rights of appearance and legal aid for indigents. However, practical efforts to enhance access to justice have been limited. Impartiality and independence remain compromised by structural vulnerabilities and executive interference. Procedural inequities also persist for rural and low-income populations.

2.1.1 Rule of Law

The rule of law is a foundational doctrine requiring all individuals, institutions, and entities to abide by laws that are publicly promulgated, equally enforced, and independently adjudicated. It requires all individuals, institutions, and entities to abide by laws that are publicly promulgated, equally enforced, and independently adjudicated.

The key elements of the rule of law encompass principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, and human rights protections. By constraining arbitrary power, the rule of law enables fair and impartial justice administration.

This doctrine has several benefits for the administration of justice in a society. Some of these benefits are first, the rule of law ensures that the law is supreme and that no one is above the law. This means that both the government and the private actors are accountable to the law and can be held responsible for their actions. This prevents the abuse of power and corruption and promotes respect for human rights and the dignity of all people.[48] Second, the rule of law ensures that the law is equal and fair for everyone.[49] This means that everyone has the same rights and obligations under the law and that everyone is entitled to a fair trial and due process of law. It promotes the equality and non-discrimination of all people and protects them from arbitrary and unjust decisions. Third, the rule of law ensures that the law is transparent and

[48] Administration of Justice and Law Enforcement | OH CHR. https://www.ohchr.org/en/topic/administration-justice-and-law-enforcement.
[49] The Rule of Law and Administrative Justice - Oxford Academic. https://academic.oup.com/edited-volume/38690/chapter/336007306.

participatory.[50] This means that the law is clear, accessible, and understandable for everyone and that the people have a voice and a role in the making and implementation of the law. This fosters the trust and confidence of the people in the legal system and enhances the legitimacy and accountability of the government. Fourth, the rule of law ensures that the law is independent and impartial.[51] This means that the law is administered by competent and professional judges and lawyers, who are free from any external influence or pressure. This guarantees the separation of powers and the checks and balances among the branches of government, and ensures the fairness and integrity of the judicial process.[52]

Therefore, the rule of law is essential for the proper administration of justice, as it creates an atmosphere of order, stability, and security, where the people can enjoy their rights and freedoms, and where the government can perform its duties and responsibilities in a lawful and effective manner.

2.1.2 Separation of Powers

The separation of powers is a key principle of democratic governance that divides power between the executive, legislative, and judicial branches of government. This separation helps prevent any one branch from becoming too powerful and ensures checks and balances between the branches.

In relation to the administration of justice, the separation of powers works as follows:

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[50] THE RULE OF LAW: PILLAR OF DEMOCRACY AND JUSTICE. https://legalvidhiya.com/the-rule-of-law-pillar-of-democracy-and-justice/.
[51] Rule of law and its relevance - iPleaders. https://blog.ipleaders.in/rule-law-relevance/.
[52] The Rule of Law and the Proper Administration of Justice - Faculty Office. https://www.facultyoffice.org.uk/code-of-practice/the-rule-of-law-and-the-proper-administration-of-justice/.

The legislative branch is responsible for enacting laws and statutes that define crimes, set punishments, establish courts, allocate funding, and regulate court procedures.[53] However, the legislature cannot interfere in ongoing judicial processes or change the outcome of any specific court case.

The executive branch is tasked with enforcing the laws through police and prosecutors.[54] The executive can grant pardons or commutations after a conviction, but cannot overrule or undermine the verdicts reached through the judicial process.

The judicial branch consists of the court system, which includes judges and juries.[55] The courts are responsible for independently interpreting the laws and adjudicating cases through fair trials. The judiciary does not make laws or enforce them - its role is limited to ruling on legal disputes and ensuring due process.

No single branch can undermine or overpower the others.[56] The legislature cannot overturn court verdicts or imprison judges. The executive cannot change laws or legislate from the bureaucracy. And the judiciary cannot make laws or run law enforcement agencies.

This separation of powers aims to prevent tyranny and protects citizens' rights and liberties.[57] By dividing power between the branches, no one part of the government has total control over the administration of justice. The checks and balances force the branches to cooperate and maintain transparency. If any branch oversteps its bounds,

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[53] J. Madison, 'The Federalist No. 47' in Alexander Hamilton, James Madison and John Jay, The Federalist Papers (1788) 301.
[54] Charles de Secondat Montesquieu, The Spirit of Laws (1748) Bk XI, Ch 6.
[55] 'Role of the Courts' (United States Courts) https://www.uscourts.gov/about-federal-courts/role-courts, accessed 11 November 2023.
[56] Tom Bingham, The Rule of Law (Penguin, 2010) 56-57.
[57] 'Separation of Powers-An Overview' (National Conference of State Legislatures, 2019) accessed 11 November 2023.

the other branches can check its power. This structure ensures an impartial justice system and adherence to the rule of law.

2.1.3 Independence of the Judiciary

The independence of the judiciary is a crucial principle for the fair administration of justice. In Tanzania, judicial independence is provided for under Article 107B of the Constitution. This states that the judiciary shall be independent and free from interference and that the courts shall be autonomous and no person or authority can interfere with legal proceedings.[58]

Structurally, the judiciary is established as a separate arm of the government from the executive and legislature. The court system consists of the Court of Appeal, High Court, and magistrate courts. The Chief Justice and other judges are appointed by the President after nomination by the Judicial Service Commission, an independent body. Judges have security of tenure and can only be removed for misconduct through an independent tribunal.[59]

In practice, the extent of judicial independence in Tanzania has been questioned in recent years.[60] The executive has been accused of exerting pressure on judges in politically sensitive cases. The appointment process for judges has also allegedly become more politicized. There have been calls for reforms to strengthen safeguards around judicial appointments and conditions of service.

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[58] The Constitution of the United Republic of Tanzania 1977, art 107B.
[59] Alicia Ely Yamin and Deborah Maine, 'Women's Organizations and the Enforcement of the Constitution in Tanzania' (2020) 113 AJIL Unbound 40, 41.
[60] Zitto Kabwe, 'Is Tanzania's Judiciary Independent?' (The Citizen, 17 August 2020) https://www.thecitizen.co.tz/tanzania/oped/is-tanzania-s-judiciary-independent--2719568, accessed 11 November 2023.

The legal framework establishing the judiciary and its oversight bodies like the Judicial Service Commission provides a formal foundation for independence. But the practical application depends on respecting those legal boundaries. An overreach by the executive can erode judicial autonomy. More vigilance is required to ensure the judiciary can withstand improper interference and dispense justice fairly and impartially.[61]

While the constitutional protections remain intact, Tanzania must continue working to fully realize an independent judiciary in practice.[62] Ensuring fair trials and equal access to justice requires judges to make decisions based solely on the law and evidence, without fear or favour. This upholds citizens' rights and maintains the rule of law.

2.1.4 Access to Justice

Access to justice is a basic right that allows citizens to seek and obtain remedies for grievances through formal legal institutions. In Tanzania, access to justice is hampered by various structural and practical barriers.

The Constitution guarantees equal access to justice for all persons under Article 13(6).[63] However, steep court fees, complex procedures, language barriers, and lack of legal representation impede many Tanzanians, especially the poor and

[61] Benedict T. Mtui, 'The Significance of an Independent Judiciary to the Bill of Rights in Tanzania' (2011) 2(1) Global Journal of Politics and Law 36.
[62] Jamie Hitchen and Edward Hobley, 'Tanzania: Is the Judiciary Still Divided on the Reforms?' (Chatham House, 20 December 2021) https://www.chathamhouse.org/2021/12/tanzania-judiciary-still-divided-reforms, accessed 11 November 2023.
[63] The Constitution of the United Republic of Tanzania 1977, art 13(6).

marginalized, from utilizing the formal legal system.[64] Most ordinary citizens resort to informal justice mechanisms like clan elders for dispute resolution.

Efforts are being made to improve access through legal aid initiatives, small claims courts, public interest litigation, and community advisors to assist with navigating the courts.[65] However, there is still a long way to go to make the justice system genuinely accessible to all. Low awareness of rights, lack of legal resources outside major cities, and delays due to case backlogs all persist.

The justice system's infrastructure and capacity also require strengthening. Court facilities, personnel, and record-keeping processes are inadequate in many rural areas. Magistrates face challenging work conditions. Alternate dispute resolution is promoted but remains limited in application. Enforcement of judgments is inconsistent.

While the Justice Sector Reform Program has identified key strategies to expand access, implementation requires more government commitment of funds and oversight.[66] A holistic approach is essential, encompassing legal frameworks, physical infrastructure, human resources, legal aid mechanisms, and public legal education.[67] Progress may be gradual, but promoting fair and equal access to justice for all Tanzanians is vital.

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[64] Rhoda Katompwe, 'Challenges in Accessing Justice in Rural Tanzania' (Raoul Wallenberg Institute, 2018) https://rwi.lu.se/app/uploads/2018/06/Katompwe.pdf, accessed 11 November 2023.
[65] Donald Deya, 'Assessment of Access to Justice in Tanzania's Rural Courts' (Legal and Human Rights Centre, 2014).
[66] Jamie Hitchen, 'Access to Justice in Sub-Saharan Africa: The Role of Traditional and Informal Justice Systems' (Chatham House, 28 November 2018) https://www.chathamhouse.org/2018/11/access-justice-sub-saharan-africa-role-traditional-and-informal-justice-systems accessed 11 November 2023.
[67] 'United Republic of Tanzania Justice Sector Reform Programme 2011-2016' (Ministry of Constitutional Affairs and Justice, July 2013).

2.2 Theoretical Frameworks

This study examines the principles guiding the administration of justice in Tanzania through the dual lenses of legal positivism and critical legal theories. Legal positivism focuses on analyzing the formal legal rules, doctrines, and institutions established in Tanzania's justice system. In contrast, critical perspectives help reveal gaps between the law in theory and the law in practice, highlighting how structural inequalities and power dynamics shape access to justice.

2.2.1 Procedural Justice Theory

Procedural justice theory asserts that the fairness of justice processes shapes participants' satisfaction, perceived legitimacy, and willingness to comply with outcomes.[68] Key elements include opportunities for voice, neutrality, respectful treatment, and engendering trust in authorities.[69] Failures in procedural fairness can undermine adherence to the justice system.

Procedural justice theory emphasizes the importance of fair process and treatment in shaping people's evaluations of dispute resolution, authorities, and institutions.[70] Even if the outcome is unfavourable, people are more likely to accept it if the procedures are perceived as fair.

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[68] Tom R Tyler, 'Procedural Justice, Legitimacy, and the Effective Rule of Law' (2003) 30 Crime and Justice 283.
[69] Celestine Nyamu Musembi, 'An Actor-Oriented Approach to Rights in Development' (2002) 36(3) IDS Bulletin 41.
[70] Aidan Harris, 'Policing the People: Coercion and Legitimacy in Tanzania' (Institute of Development Studies, 2014) https://opendocs.ids.ac.uk/opendocs/handle/20.500.12413/11189, accessed 11 November 2023.

In the context of Tanzania's justice system, insights from procedural justice theory highlight the need to focus on strengthening legitimacy through transparent, consistent procedures and respectful treatment.[71]

The implications include ensuring citizens understand court processes, treating all parties equally, allowing citizens to voice their opinions, having authorities explain their decisions, reducing corruption, and holding officials accountable for adhering to rules and procedures consistently.[72]

In essence, procedural justice requires the justice system to be transparent, participatory, ethical, and accountable. Reform efforts in Tanzania should prioritize these elements - not just case backlogs, resources, or training. A focus on procedural fairness can improve citizens' trust in the system despite other challenges.

2.2.2 Critical Legal Theories

Critical legal theories contend that ostensibly neutral laws and institutions may embed systemic inequalities that favour privileged groups over marginalized ones. Critical race theory specifically examines how procedures and norms may perpetuate racial injustice. Related perspectives can uncover barriers embedded in justice systems.

Feminist Legal Theory highlights how patriarchal social structures and gender stereotypes are often reinforced through formal legal institutions in Tanzania.[73] Discriminatory customary laws governing marriage, property rights, and gender

[71] M D McGinnis, 'Procedural Justice in Tanzania' (2011) 3(1) Yale Journal of International Affairs 97.
[72] Deborah Isser and Leigh Baldwin, 'Access to Justice in a Post-Authoritarian State: The Case of Tanzania' (2009) 4(1) Hague Journal on the Rule of Law 54.
[73] Issa G Shivji, 'Law's Empire and Empire's Lawlessness: Beyond Anglo-American Law' (2003) 1 African Development 74.

violence constrain women's access to justice. Feminist critique calls for reforming laws, improving enforcement, increasing legal awareness among women, and appointing more female judges and officials to counteract systemic bias.

Critical Race Theory examines how Tanzania's colonial legacy of racial oppression continues to marginalize groups like the Maasai through land laws that facilitated the appropriation of grazing lands.[74] Racial bias also manifests through discrimination in law enforcement. CRT analysis traces linkages between historical racial injustice and modern forms of structural racism.

Postcolonial Legal Theory contends that Tanzania's justice system is still fundamentally shaped by English common law imposed during colonialism.[75] The Anglo-Saxon adversarial model often conflicts with Tanzanian communal values. Postcolonial theorists advocate incorporating indigenous mediation and norms to decolonize the justice sector and restore Tanzanian identity.

Critical Legal Studies reveal how Tanzania's laws and legal institutions have predominantly served elite political and economic interests, at the expense of peasants and workers.[76] Legislation is swayed by corporate lobbying rather than public welfare. CLS urges moving from procedural technicalities to substantive justice focused on deprived classes.

Incorporating insights from these critical perspectives can help highlight structural deficiencies and biases in Tanzania's legal system. The theories underscore the need

[74] Rwekaza Mukandala, 'African Values and Democratic Governance: The Tanzanian Experience' (2019) 6 African Human Rights Law Journal 335.
[75] Ambreena Manji, 'Imagining Women's 'Legal World': Towards a Feminist Theory of Legal Pluralism in Africa' (1999) 8 Social & Legal Studies 435.
[76] James Thuo Gathii, 'TWAIL: A Brief History of its Origins, its Decentralized Network, and a Tentative Bibliography' (2011) 3(1) Trade, Law and Development 26.

for transformative reforms to uphold constitutional ideals of equality, dignity, access, and social justice for all citizens.

2.3 Conclusion

This chapter has outlined foundational principles and conceptual frameworks essential for examining the administration of justice. Tanzania has recognised these principles constitutionally and legally, but meaningful realization remains lacking. The next chapter will detail specific legal and practical deficiencies in Tanzania's justice administration.

CHAPTER THREE

NATIONAL LEGAL AND INSTITUTIONAL FRAMEWORKS ON THE ADMINISTRATION OF JUSTICE

3.0 Introduction

This chapter examines the national structures that regulate judicial administration in Tanzania. Its goal is to identify and evaluate the legislation and entities in charge of the country's justice sector management. Assessing national laws and institutions dealing with justice administration is critical for determining a country's justice sector's efficacy. It aids in evaluating the legal framework, access to justice, independence and impartiality, efficiency and timeliness, accountability and transparency, and human rights compliance. An evaluation of this type allows for the identification of strengths and shortcomings, leading to reforms that can improve the general functioning of the justice system and maintain the rule of law.

3.1 Statutes

Statutes are written laws that are passed by a legislative body in a certain jurisdiction. Statutes regulating the administration of justice are rules and regulations that form the foundation for the functioning and operation of a given jurisdiction's judicial system. These statutes provide forth the rules and processes that regulate the administration of justice, such as the structure and powers of judicial institutions, the rights and obligations of persons participating in legal proceedings, and the principles of fair and impartial adjudication. They provide the legal concepts and systems that guide the acts of judges, prosecutors, attorneys, and other justice system actors.

3.1.1 The Constitution of the United Republic of Tanzania

The constitution is the system of legal rules, principles, practices that fundamentally governs the state. It is through the constitution the state is run. It is often called mother law because of two reasons. First, it is the supreme law of the land that is there is no any other law which is above the constitution in terms of force of law. Second, it determines the validity of the other laws that is when other laws contradict with constitution they are void to the extent of their contradictions.[77]The constitution is important legal instrument in the administration of justice because of the following reasons. One, the Constitution establishes the superior courts in Tanzania. The Constitution establishes the Court of Appeal of Tanzania through article 117(1). Additionally, the Constitution establishes the High Court of Tanzania through article 108(1). Two, the Constitution prescribes the jurisdiction of the superior courts in the country. For instance, article 108(2) prescribes the jurisdiction of the High Court of Tanzania to "deal with any matter according to the legal traditions obtaining in Tanzania". Also, article 117(3) vests the power to the Court of Appeal of Tanzania to "hear and determine every appeal brought before it arising from the judgment or other decision of the High Court or of a magistrate with extended jurisdiction." Three, the Constitution prescribes the principles for administration of justice. It urges the courts to observe various principles when delivering decisions in matters of criminal and civil nature. The principles are impartiality, timely justice, reasonable compensation, dispute resolution and justice without tie up of unnecessary

[77] The Constitution of the URT of 1977 as amended, art 64(5) enshrines constitutional supremacy. It states that without affecting how the Constitution of Zanzibar is applied in accordance with its provisions, this Constitution shall be enforceable throughout the United Republic. If any other law conflicts with any of its provisions, this Constitution shall take precedence, and that other law shall be nullified to the extent of the conflict.

technicalities.[78] Four, the Constitution declares and protects the principle of independence of judiciary, which is the crucial aspect in the administration of justice. The Constitution declares 'all courts shall have freedom and shall be required only to observe the provisions of the Constitution and those of the laws of the land.'[79] The principle applies to the dispensation of justice. Moreover, the Constitution secures the tenure of office of Justices of Appeal and Judges of the High Court.[80] Besides, the Constitution guarantees remuneration of the Judges of the High Court and Justices of Appeal from the Consolidated Fund.[81]

3.1.2 The Magistrates Courts Act

The Magistrates Courts Act[82] is the principal legislation[83] providing for the jurisdiction, powers, and functions of magistrates' courts and for other related matters. It is an important law in the administration of justice due to various reasons. The first is the establishment of magistrates' courts. The Magistrates Courts Act

[78] Ibid, art 107A (2) notes that the court must uphold the following principles when rendering judgments in civil and criminal cases in accordance with the law: impartiality toward all parties without regard to social or economic standing; refraining from delaying the administration of justice without justification; providing reasonable compensation to victims of wrongdoings committed by others in accordance with the applicable law passed by the Parliament; and fostering and enhancing dispute resolution.

[79] Ibid, art 107B outlines independence of judiciary as key principle to the administration of judiciary. It states all courts are free to exercise their judicial authority and are only obligated to abide by the laws of the land and the requirements of the Constitution.

[80] Ibid, arts 110 and 120 denoting the tenure of office of Judges of the High Court and Justices of Appeal respectively.

[81] Ibid, art 142 deals with rremuneration of certain holders of public offices including judges of the High Court and Justices of Appeal.

[82] Cap 11 R.E. 2019

[83] A principal legislation is the law passed by the Parliament. The Parliament of Tanzania has the constitution mandate to make and unmake laws applicable to Tanzania according to articles 4(1) and 64 of the Constitution of the URT of 1977 as amended. When the Parliament makes the law has two main parts such as the National Assembly and the President as per article 62(1) of the Constitution of the URT of 1977 as amended. The national Assembly passes the law while the President assents the law according to article 63(1) of the Constitution of the URT of 1977 as amended. Without presidential assent, no law shall come into operation in accordance with article 97(4) of the Constitution of the URT of 1977 as amended.

establishes primary court[84], district court[85] and resident magistrate courts[86]. The second is the prescription of jurisdiction of magistrates' courts. For instance, section 3 of the Magistrates Courts Act prescribes the territorial jurisdiction of the primary court to be within district, section 4 of the Magistrates Courts Act prescribes territorial jurisdiction of district court to be within district and section 5 of the Magistrates Courts Act prescribes territorial jurisdiction of the resident magistrate court to be within region. Moreover, section 18(1)(a) of the Magistrates Courts Act establishes the subject matter jurisdiction of the primary court to be in all matters relating customary and Islamic law and pecuniary jurisdiction to not more than 30 million shillings for recovery of civil debt arising from contract and not more than 50 million shillings for recovery of civil debt due to the government. Section 40(2) of the Magistrates Courts Act establishes pecuniary jurisdiction of district and resident magistrate courts to be not more than 300 million shillings for immovables and not more than 200 million shillings for movables. The third is appearances in the magistrates' courts. Section 33(1) of the Magistrates Courts Act prohibits appearance of advocate and public prosecutor on behalf of the parties in the primary courts. The exception is provided under section 33(4) of the Magistrates Courts Act when the primary court is presided by the resident magistrate. Section 33(2) of the Magistrates Courts Act prescribes 'a primary court may permit any relative or any member of the

[84] Primary courts are established in every district pursuant to s 3 (1) of the Magistrates Courts Act, which states that they shall have jurisdiction over the corresponding districts in which they are established, subject to the restrictions of any laws then in effect.

[85] According to s. 4, a district court is hereby constituted in each district, and it will have jurisdiction over matters relating to that district, subject to the rules of any laws already in effect. A district court's official designation is "district court of the district in which it is established." The Chief Justice has the authority to change any district court's designation by order that is published in the Gazette.

[86]The Magistrates Courts Act, s 5 states that The Chief Justice can establish resident magistrate courts by order published in the Gazette, exercising jurisdiction in specified areas. The court's designation remains the same as the order establishing it. The Chief Justice can also vary the court's designation or area, but it does not affect its jurisdiction to continue hearings or determine proceedings.

household of any party to any proceedings of a civil nature, upon the request of such party, to appear and act for that party.' The fourth is remedies. When the courts deliver decisions in dispensation of criminal and civil justice, parties may be aggrieved. The Magistrates Courts Act prescribes the remedies against the decisions of the magistrates' courts. For instance, section 20 of the Magistrates Courts Act provides for the appeal from the primary courts and section 25 provides for appeals from the district court in appellate jurisdiction. Additionally, section 22 of the Magistrates Courts Act provides for the revisional jurisdiction against decisions of the primary court and section 31 of the Magistrates Courts Act provides for revision against the decisions subordinate courts.

3.1.3 The Civil Procedure Code

The Civil Procedure Code[87] is the procedural law providing for the procedures, principles and practice relating the civil cases. It is unique law because it contains both principal legislation provisions such as sections and parts and subsidiary legislation provisions such as orders and rules. It is significant law in the administration of civil justice due to hereby reasons.

One, the Civil Procedure Code prescribes the overriding objective principle. Section 3A of the Civil Procedure Code establishes the overriding objective principle to 'facilitate the just, expeditious, proportionate and affordable resolution of civil disputes.' The overriding objective has several purposes. First, to ensure just determination of the proceedings. Second, to ensure efficient use of the available judicial and administrative resources including the use of suitable technology. Third,

[87] Cap 33 R.E. 2019

to ensure timely disposal of the proceedings at a cost affordable by the respective parties.[88] Two, the Civil Procedure Code enunciates the subordination of courts. Section 4 of the Civil Procedure Code establishes 'every court of a resident magistrate and every district court is subordinate to the High Court, and every district court is subordinate to the court of the resident magistrate within the area of whose jurisdiction it is situate.' It is important to determine the hierarchy of courts and their powers in the administration of justice. Three, the Civil Procedure Code provides for procedural guidance on concurrent jurisdiction and what to do in such situation. section 13 of the Civil Procedure Code reiterates 'Every suit shall be instituted in the court of the lowest grade competent to try it and, for the purposes of this section, a court of a resident magistrate and a district court shall be deemed to be courts of the same grade.' Nonetheless, the procedural guidance does not oust the general jurisdiction of the High Court. Four, the Civil Procedure Code provides for remedies against the decisions of the courts. Section 76 of the Civil Procedure Code deals with powers of the High Court when dealing with appeals from the subordinate courts such as resident magistrate courts and district courts. Section 77 of the Civil Procedure Code caters for reference for the opinion of the High Court. Section 78 of the Civil Procedure Code encompasses the powers of the court to make review of their own decisions. Section 79 of the Civil Procedure Code focuses on the revision of the decisions of the subordinate courts by the High Court.

[88] The Civil Procedure Code, s 3B notes that the Court shall handle all matters brought before it with a view to achieving the just determination of the proceedings, efficient use of the available judicial and administrative resources, including the use of appropriate technology, and timely disposition of the proceedings at a cost affordable by the respective parties. This is done in order to further the overriding objective outlined in section 3A. Moreover, a party to civil proceedings or an attorney for such a party shall have an obligation to aid the Court in furthering the goal of this Act and, to that end, to take part in the Court's processes and obey its directives and instructions.

3.1.4 The Criminal Procedure Act

The Criminal Procedure Act[89] is the primary legislation catering for the procedure to be followed in the investigation of crimes and the conduct of criminal trials and for other related purposes. It is relevant law in the administration of criminal justice in several ways. First, criminal pre-trial procedures. The administration of criminal justice has its roots in the arraignment of the suspect of a criminal wrong. The Criminal Procedure Act sheds light on the fair and just pretrial procedures such as arrest[90], search and seizure[91], interview[92] and investigation[93]. Second, criminal trial procedures. The essential component of criminal justice centres on the trial procedures. The Criminal Procedure Act governs the trial process through control of criminal proceedings[94], institution of criminal proceedings[95] and trial procedures[96].Third, principles of criminal justice. The Criminal Procedure Act enunciates the principles applicable to rendering of the criminal justice such as right to police bail[97] and court bail[98], legal representation[99], fair hearing[100] and reasons for the decisions[101].

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[89] Cap 20 R.E. 2022
[90] The Criminal Procedure Act, ss 11 to 33 provide for mode, reasons, requirements, conditions, and circumstances of effecting arrest of person.
[91] Ibid, ss 38 to 45 provide for mode, reasons, requirements, conditions and circumstances of effecting search and seizure.
[92] Ibid, ss 52 to 58 deal with how, when, conditions, requirements, and circumstances of undertaking interview for the purpose of criminal investigation
[93] A police officer may conduct an investigation under s. 10(1) of the Criminal Procedure Act. It states that where a police officer has reason to believe that an offense has been committed or to anticipate a breach of the peace based on information received or in any other way, he or she shall, as necessary, travel there personally to investigate the facts and circumstances of the case and to take whatever steps may be necessary to find and apprehend the offender if the offense is one for which he or she may arrest without a warrant.
[94] The Criminal Procedure Act, part IV
[95] Ibid, part V
[96] Ibid, part VI
[97] The Criminal Procedure Act, ss 64 to 69
[98] Ibid, s 148

3.1.5 The Appellate Jurisdiction Act

The Appellate Jurisdiction Act[102] is a principal legislation dealing with appeals, revisions, reviews, and application to the Court of Appeal of the United Republic of Tanzania.[103] It gives the Court of Appeal the jurisdiction to entertain matters of revisions, appeals and applications from the high court of Tanzania and Zanzibar and tribunals. The law has something to do with justice administration in Tanzania as far as the court of appeal of Tanzania is concerned. It establishes some values that binds the judicial system especially the court of appeal of Tanzania to comply with when handling the dispensation of justice. First, the Appellate Jurisdiction Act confers the powers to the Court of Appeal of Tanzania to determine appeals, revisions, and applications. For instance, section 4(1) of the Appellate Jurisdiction Act[104] vests the appellate power to the court of Appeal of Tanzania from the high court and subordinate courts with extended jurisdiction. It states The Court of Appeal shall have jurisdiction to hear and determine appeals from the High Court and from subordinate courts with extended jurisdiction. Moreover, section 4(3) of the Appellate Jurisdiction Act[105] confers the power of undertaking revisions. It states inter alia that the Court of Appeal shall have the power, authority, and jurisdiction to call for and examine the record of any proceedings before the High Court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, order or any other decision made thereon and as to the regularity of any proceedings

[99] According to s. 54 (1), a police officer must, upon request from a person who is being restrained, arrange for reasonable facilities to be made available so that the person can contact a lawyer, a family member, or a friend of his or her choosing.
[100] Ibid, ss 192 to 299
[101] Ibid, s 312(1)
[102] Cap 141 R.E. 2019
[103] The Appellate Jurisdiction Act, long title
[104] Cap 141 R.E. 2019
[105] Cap 141 R.E. 2019

of the High Court. Additionally, section 4(4) of the Appellate Jurisdiction Act[106] vests the power of reviewing its decisions to the Court of Appeal of Tanzania. It states that the Court of Appeal shall have the power to review its own decisions. Hence, there no appeal after the Court of Appeal of Tanzania but there is review of the decision made by the Court of Appeal of Tanzania. Hence, according to the wording of the sections mentioned above, it shows that the Court of Appeal of Tanzania has roles of determining the appeals, applications, and revisions from the lower courts and review from its own decisions.

Besides, Section 3A (1) of the Appellate Jurisdiction Act[107] establishes the principle of overriding objective. It is a principle which requires the court to deal with matters at a just, fair, and proportionate cost as far as practicable to do so. The main purpose of the overriding objective is to facilitate the just, expeditious, proportionate and affordable resolution of all matters.[108] The Court is duty bound to give effect the principle of overriding objective when it determines appeals, revisions, applications and reviews.[109] Also, a party to proceedings before the court or an advocate for such a party shall have the duty to assist the Court to further the overriding objective and to that effect, participate in the processes of the Court and comply with directions and orders of the Court.[110]What are important matters to be considered to establish and effect the principle of overriding objective? Section 3B (1) of the Appellate

[106] Ibid
[107] Ibid
[108] According to section 3A (1), the main goal of this Act is to make it easier for all issues covered by it to be resolved in a fair, timely, reasonable, and economical manner.
[109] The Court shall strive to give effect to the overriding goal stated in subsection (1) in the exercise of its functions under this Act or the interpretation of any of its provisions, according to section 3A (2).
[110] Ibid, s 3B (2)

Jurisdiction Act[111] gives an answer to the question. It states that for the purpose of furthering overriding objective the court shall handle the matter presented before the court with view of attaining first just determination of the proceedings. Second, to attain efficient use of the available judicial and administrative resources including the use of suitable technology. Third, to attain timely disposal of the proceedings in the Court at a cost affordable by the respective parties.

3.1.6 The Legal Aid Act

The Legal Aid Act[112] was enacted in 2017 to provide for legal aid services to indigent persons in Tanzania.[113] The Act aims to ensure that every person has access to justice, regardless of their financial means. The Act establishes the Legal Aid Department, which is responsible for the administration of legal aid services in the country. The Act provides for the various legal aid services such as legal representation[114], legal advice and assistance[115] and alternative dispute resolution[116]. The Act outlines the eligibility criteria for legal aid services, which include income and asset tests. The Act also provides for the appointment of legal aid providers, who may be lawyers, paralegals, or non-governmental organizations with legal expertise. The Act establishes the Legal Aid Fund, which is funded by the government and other sources, such as donations and grants. The Fund is used to finance the

[111] Cap 141 R.E. 2019
[112] Cap 21 R.E. 2019
[113] The Legal Aid Act is intended to regulate and coordinate the provision of legal aid services to indigent persons, to recognise paralegals, to repeal the Legal Aid (Criminal Proceedings) Act and to provide for other related matters.
[114] The Act provides for the provision of legal representation to eligible persons in criminal and civil matters
[115] The Act provides for the provision of legal advice and assistance to eligible persons who seek to protect or enforce their rights.
[116] The Act provides for the use of alternative dispute resolution mechanisms, such as mediation and arbitration, to resolve disputes in a timely and cost-effective manner.

provision of legal aid services and to support the administration of the Legal Aid Department. Overall, the Legal Aid Act is a significant step towards promoting access to justice for all, particularly for marginalized and vulnerable groups who may face barriers in accessing legal services. However, there are still challenges in implementing the Act effectively, such as inadequate funding and limited capacity of legal aid providers. Nonetheless, the Act provides a legal framework for the provision of legal aid services, and it is an important tool for ensuring the protection and enforcement of legal rights in Tanzania.

3.1.7 The Court of Appeal Rules

The Court of Appeal Rules[117] are adjectival rules which provide for the procedures at the Court of Appeal of Tanzania. They set out how to go about appeals, revisions and reviews at the Court of Appeal of Tanzania. They are subsidiary legislation as they were not made by the parliament. They were made under the auspice of the Appellate Jurisdiction Act.

The rules are so important in dispensation of justice in Tanzania by showing the roles of the judicial system especially the Court of Appeal of Tanzania. They provide essential matters that facilitate the dispensation of justice in the country through the Court of Appeal of Tanzania. first, the rules state the procedures and administrative matters in handling the appeals, revisions, reviews, and application at the Court of Appeal of Tanzania. However, the same rules allow the Court of Appeal of Tanzania to depart from the rules and their applicability when the cause of justice requires so. In doing so, the Court shall invoke the departure of the rules when it is necessary. It

[117] G.N. 368 of 2009 as revised by G.N. 344 of 2019

is necessary when several circumstances are manifesting. The first circumstance to depart from the rules is when the Court of Appeal of Tanzania is dealing with any matter for which no provision is made by these Rules or any other written law. The second circumstance is when the Court of Appeal of Tanzania does department for better meeting the ends of justice. The third circumstance is when the Court of Appeal wants to prevent an abuse of the process of the Court.[118] Second, the rules allow the Court of Appeal of Tanzania to extend time to file either appeal, revision, review, or application when the set deadline has expired. This is a call for justice. The law has set a time limitation for the seeking legal action before the Court of Appeal of Tanzania. The law has set the time frame because it is based on the essence of saying that you must strike the iron while it is still hot. Nonetheless, the rules have observed that there are situations which may cause the delay of seeking a legal action before the court to a justice seeker that may lead to expiration of time which in return can limit the accessibility of justice to the person. Thus, why the rules have vested the discretion of extending the time to file a legal action to the court when the time set for it expires. Moreover, it shows that extension of time shall be entertained when the good cause has been shown by the justice seeker who has delayed to file a legal action before the court.[119] However, what amounts to good cause is subject to debate. It depends on different factors. The Court prior extending the time as vested shall take into consideration different factors to determine whether the cause shown is sufficient to enable the time extension for the cause of justice.

[118] The Court of Appeal Rules, r 4

[119] According to rule 10, the Court may extend the time allotted by these Rules or by a High Court or tribunal decision for carrying out any act permitted or required by these Rules, whether before or after the time allotted has expired and whether before or after the act has been carried out; and any reference in these Rules to a time allotted for carrying out an act shall be construed as a reference to the time allotted as so extended.

Third, the constitutional right of fair hearing as indicated include the right to legal representation. Legal representation is a constitutional right. As rightly observed by Mwalusanya J as he then was, in *Haruna Said* v *Republic*[120] where in an appeal the judge of the High Court found that the trial magistrate had wrongly substituted a charge after acquitting the appellant of all the charges with a charge equivalent to the previous charges and convicted him. The judge also found that no evidence on theft had been adduced and that the case involved complicated issues of law which required the trial magistrate to forward to the Chief Justice certified copies of proceedings and recommendation that the appellant needed legal aid to conduct his defence. The Judge observed that the right to fair hearing under article 13(b)(a) of our Constitution carries with it the right to legal representation. The rules cater for legal representation at the Court of Appeal of Tanzania. The rules allow the justice seeker at the Court of Appeal of Tanzania to appear either personally or by advocate.[121]Besides, the Chief Justice or the Presiding Judge may appoint and advocate to attend the justice seeker in an appeal. They can be done for the interests of justice.[122] Nonetheless, there is a limitation as to an advocate appearing at the Court of Appeal of Tanzania. The limitation states that no advocate shall have the right of audience in the Court unless he has practiced for a period of not less than five years in the High court and courts subordinate thereto. This may challenge the justice seeker with and advocate with less than five years' experience. There is alternative way round whereby the advocate may apply for waiver to have right of

[120] [1991] TLR 124 (HC)
[121] The Court of Appeal Rules, r 30(1) allows a party to any proceedings in the Court may appear in person or by advocate.
[122] The Court of Appeal Rules, r 31

audience at the Court of Appeal of Tanzania even if he or she has got less than five years' experience of legal practice.[123]

3.1.8 The Magistrates' Courts (Civil Procedure in Primary Court) Rules

The Magistrates' Courts (Civil Procedure in Primary Court) Rules are subsidiary legislation.[124] They exist under the auspice of section 71 of the Magistrates' Courts Act[125]. They provide rules, principles and practices governing civil litigation in the primary courts of Tanzania. The rules apply to all proceedings of a civil nature in a primary court.[126] These rules do not provide speed track of cases in civil litigation in the primary courts. The law, which provide for speed track of cases, is not applicable in the primary court and the law, which applies to primary court, does not contain speed track of cases.

Moreover, the Magistrates' Courts (Civil Procedure in Primary Court) Rules allows legal representation through appearance on behalf of the parties in the primary courts. It provides inter alia that when any party to a suit appears by a relative or member of his household.[127] This shows that a party may have a legal representative to appear on his or her behalf in the primary court. With the amendment of the Magistrates Courts Act through the Written Law Miscellaneous Amendments Act[128], according to rule 21 of the Magistrate's Courts (Civil Procedure in Primary Courts) Rules[129], legal representation is not limited to a relative or member of household.

[123] Ibid, r 33
[124] G. N. No. 310 of 1964 as amended by G.N No. 119 of 1983
[125] Cap 11 R.E 2019
[126] The Magistrates' Courts (Civil Procedure in Primary Court) Rules, r 3
[127] Magistrate's Courts (Civil Procedure in Primary Courts) Rules, r 21
[128] Act No. 5 of 2021
[129] Government Notice No. 310 of 1964

Now, this means advocates or public prosecutor may appear on behalf of the parties in the primary courts of Tanzania. Nevertheless, appearance by legal representative does not terminate the need for personal appearance when the court thinks fit.

3.1.9 The Criminal Procedure (Plea Bargaining) Rules

The Criminal Procedure (Plea Bargaining) Rules are subsidiary legislation.[130] They set out the procedure for initiating a plea agreement. The Chief Justice of Tanzania published these rules under section 194H of the Criminal Procedure Act[131]. The purpose of publishing these rules is for better carrying out of the provisions of plea-bargaining in the Criminal Procedure Act. The publication for these rules was on 5 February 2021 via Government Notice Number 180 of 2021. Before making of the Rules, the practice has been that the accused initiates a plea-bargaining request by writing a letter to the DPP through the prison authority. The Court was only involved after the conclusion of the agreement between the prosecution and the defence. The Rules however requires the parties to a criminal offence to engage the Court from the beginning by notifying it orally or in writing of the intention to negotiate a plea agreement.[132] The Court has the power to fix a time within to conclude a plea agreement. The maximum time that the court may grant is 30 days.[133]

Unlike under the Act where disclosure of evidence depended on the type of Court an accused was at, under the Rules, the prosecutor is duty bound to fully disclose to the accused the evidence obtained during investigation to enable the accused make an

[130] G.N No.180 of 2021
[131] Cap.20 R.E 2019
[132] The Criminal Procedure (Plea Bargaining) Rules, rule 3
[133] Ibid, rule 3

informed decision.[134] This is a big step in improving the administration of criminal justice in Tanzania. The Rules also gives the victims the right to be involved in the plea-bargaining process specially to protect their right to compensation or restitution. The victim can even initiate a proposal to include compensation to him in the agreement.[135] The Rules has cleared the worry of many accused and defence counsel of entering into a plea agreement of an offence punishable with a minimum statutory penalty.[136] The Rules allow the accused and public prosecutor to propose a penalty in the final plea agreement. Although the rules give the Court discretion to impose a lesser penalty than the statutory minimum penalty prescribed by the law as suggested by the parties, the suggested penalty by the parties does not bind the Court.[137] The Rules prescribes the format of a plea agreement and the form of an application for setting aside a conviction founded on plea agreement.[138] Formerly there was no statutory format of the plea agreement. In Tanzania, all economic offences, sexual offences, drug offences and many other offences attract severe minimum statutory penalties. Many accused have been hesitant to enter into a plea agreement for fear of sentence of such severe minimum statutory custodial sentences.

3.2 National Institutions

An institution is a well-established formal organization that plays a significant role in society. Institutions responsible for the administration of justice are governmental agencies or organizations tasked with implementing and enforcing the legal system

[134] Ibid, rule 6
[135] The Criminal Procedure (Plea Bargaining) Rules, rule 10
[136] Ibid, rule 7
[137] Ibid, rule 21
[138] Ibid, rule 9 and First Schedule

as well as guaranteeing the fair and efficient administration of justice within a certain jurisdiction. These institutions are critical to preserving law and order, settling disputes, and protecting individuals' rights and liberties.

3.2.1 Courts

The judicial structure of Tanzania consists of the Court of Appeal of Tanzania, High Court of Tanzania, Subordinate Courts such as Resident Magistrate and District Courts, and Primary Courts.

3.2.1.1 The Court of Appeal of Tanzania

The Court of Appeal of Tanzania is the apex court in the judicial hierarchy of Tanzania. It is a successor to the Court of Appeal for Eastern Africa and the Privy Council. It consists of the Chief Justice and other Justices of Appeal.[139] The Chief Justice of Tanzania is the Captain of the Court of Appeal of Tanzania as a final Appellate Court in the country. The Court of Appeal of Tanzania has the mandate to hear and determine every appeal, revision, review, and application in its daily activities. The appeals and revisions brought before it arises from the judgment or other decisions of lower courts such as the High Court or a magistrate with extended jurisdiction. It may review its own decisions and applications. The Court of the Appeal of Tanzania came into existence through a constitutional amendment in 1979. Act No. 14 of 1979 affected the constitutional amendment to incorporate the court of appeal of Tanzania. Section 4 of the Appellate Jurisdiction Act[140] confers jurisdiction

[139] The Constitution of the United Republic of Tanzania of 1977 as amended, art 118(1).
[140] Cap 141 R.E. 2019

to the court of appeal of Tanzania. The Court has jurisdiction to hear and determine appeals from the High Court and subordinate courts with extended jurisdiction. In addition, the Court has the jurisdiction to hear and determine revisions from the lower courts as in the appeal. Besides, the Court has the power to review its own decisions.

The cases reaching up to the court of appeal of Tanzania touches on various social, economic, political, and legal aspects of the lives of people in and outside the country. For instance, the decisions touch on inheritance, land, commercial, labour, constitutional and other matters to mention but a few. The court of appeal touches the lives of people through decisions on the appeals, revisions, reviews, and applications it handles in its daily routines. An interesting fact is that the court of appeal decisions are primarily available to lawyers, legal scholars, parties, and judges. The message in the decisions is understood by the mentioned stakeholders but most citizens are not aware of grasping the what lessons they may learn from the decisions of the court of appeal of Tanzania. This main reason is the language of the decisions is familiar to lawyers, judges, and legal scholars but not to ordinary citizens.

3.2.1.2 The High Court of Tanzania

Article 108 (1) of the Constitution of the United Republic of Tanzania of 1977 as amended from time to time establishes the High Court of Tanzania. The High Court of Tanzania is the superior court below the Court of Appeal of Tanzania. The High Court of Tanzania was preceded by the High Court of Tanganyika and later Tanzania, established under article 17 (1) of the Tanganyika order in council, 1920. The High Court of Tanzania is described as a superior court having full jurisdiction

by virtue of section 2 (1) of the Judicature and Application of Laws Act. It is as a court of admiralty it can adjudicate disputes arising in the high seas and inland waters. However, it is subject to the Jurisdiction of the Court of Appeal as stipulated under the constitution and any other written laws. The High Court of Tanzania is also known as a court of record because it is required to keep records of its own proceedings.

3.2.1.3 The Subordinate Courts

The Subordinate Courts are the magistrates' courts subordinate to the High Court of Tanzania as pointed out under section 4 of the Civil Procedure Code that 'every court of a resident magistrate and every district court is subordinate to the High Court'. Sections 4 and 5 of the Magistrates Courts Act establish District and Resident Magistrates Courts respectively. As far as subject matter jurisdiction, the resident magistrates, and districts concurrent courts as per section 13 of the Civil Procedure Code enunciating that 'a court of a resident magistrate and a district court shall be deemed to be courts of the same grade.' Nonetheless, resident magistrates' courts have jurisdiction within region while district courts within districts as per section 4 of the Civil Procedure Code prescribing 'every district court is subordinate to the court of the resident magistrate within the area of whose jurisdiction it is situate.'

3.2.1.4 The Primary Courts

The Primary Courts are the lowest courts in the judicial structure of Tanzania. section 3 of the Magistrates Courts Act establishes primary court in every district. Resident magistrates in primary courts preside over the proceedings in the primary

courts. Section 18(1)(a) of the Magistrates Courts Act vests the power of handling matters of customary and Islamic law to the primary courts as rightly observed in *Jacob Mwangoka* v *Gurd Amon*[141], the court among other things stated that, 'the Primary Courts have jurisdiction in all proceedings of a civil nature where the law applicable is customary law.' The resident magistrates in primary courts sit with at least two assessors in every proceeding as observed inter alia in *Mariam Ally Ponda* v *Kherry Kissinger Hassan*[142] 'the assessors in the primary court have equivalent and complementary powers to those of the magistrate'.

3.2.2 Ministry of Constitutional and Legal Affairs

The Ministry of Constitutional and Legal Affairs was established in 1961 by the late Prime Minister, Julius Kambarage Nyerere, who appointed Chifu Abdallah Fundikira as the first Minister. The Ministry's organization and leadership changed based on the circumstances or the current wishes and requirements of the Head of State now. The Ministry of Constitutional and Legal Affairs' mission is built on the fundamentals of social justice, with a commitment to the advancement of social justice, equality, and the rule of law through high-quality, easily available legal services. This ministry currently derives its functions from the Presidential

[141] [1987] TLR 165, In this instance, the respondent is accused of making the appellant's daughter pregnant. The appellant had won a Primary Court decision in his favour, which was successfully appealed in the District Court on three grounds: that Primary Courts lack jurisdiction in tort cases; that a parent cannot sue for educational costs if a child's education is interrupted due to pregnancy; and that a parent has no legal recourse against a man who fornicates with his daughter. Whether the first appellate court erred in holding that position was the question on appeal.

[142] [1983] TLR 223, in this case, two assessors sat with the magistrate before the hearing began. One assessor was present when the lawsuit was resumed after an adjournment. There were two assessors once more throughout the proceedings' concluding phase, which included the summing up and verdict. The records did not indicate if the assessor who participated in the last stage of the proceedings was the same one who attended the proceedings' beginning. On An appeal, the improperness of the process was contested.

Instrument, which establishes it via Government Notice No. 144 of April 2016, with mandates such as policy formulation and implementation on legal affairs, constitutional affairs, administration and delivery of justice, legislative drafting, public prosecution, civil and international law and contracts, human rights and legal aid, law reforms, extradition and extraterritoriality, and mutual assistance in criminal matters.[143]

The ministry is important to the administration of justice in the country since it is responsible for formulating and executing legislative frameworks and policies that preserve constitutional rights and ideals. Furthermore, it supervises various organizations engaged in the administration of justice, including the Tanzanian Judiciary, the Attorney General's Chambers, the Tanzanian Law Reform Commission, and the Commission for Human Rights and Good Governance. The accomplishments of the ministry may include strengthening these institutions and increasing their efficacy in providing justice.

3.3 Conclusion

Tanzania's legal and institutional frameworks for administering justice are critical for ensuring peace, justice, and strong institutions. They are based on the common law adversarial litigation system passed down from British colonial authorities. The Judiciary of Tanzania and the Ministry of Constitutional and Legal Affairs are the primary institutions for delivering justice in Tanzania. Access to justice, decreasing case delays, boosting infrastructure, maintaining fairness and equity, and improving

[143] Ministry of Constitutional and Legal Affairs, 'The Ministry History' https://www.sheria.go.tz/pages/ministry-history accessed 12 July 2023.

the capacity of judicial systems to combat transnational crime are all major challenges.

CHAPTER FOUR

INTERNATIONAL LAW RELATING TO PRINCIPLES OF THE ADMINISTRATION OF JUSTICE

4.0 Introduction

This chapter investigates the international system of administration of justice in two limbs. First, it examines the international legal instruments in terms of their strengths and weaknesses to accommodate the administration of justice. Second, it identifies international institutions and their roles and limitations in the administration of justice. The rationale behind is that international frameworks allow for a comparative analysis of different justice systems worldwide to identify strengths, weaknesses, and best practices. The investigation in this chapter helps us to understand what works well in different contexts and what improvements can be made within their Tanzanian justice systems by comparing them to international frameworks.

4.1 International Legal Instruments

Several international legal instruments exist to offer a framework for justice administration and to promote the rule of law on a worldwide scale. These documents provide rules, concepts, and methods to ensure that judicial systems operate fairly and effectively.

4.1.1 The Universal Declaration of Human Rights

The Universal Declaration of Human Rights (UDHR) is the international instrument, Resolution 217, which enshrines human rights and freedoms, drafted by the United Nations Committee under Eleanor Roosevelt's chairpersonship. It was adopted by the

General Assembly in 1948.[144] Now, all member states of the United Nations have ratified at least one of the nine binding treaties influenced by the Declaration, with the vast majority ratifying four or more.[145]

Although not legally binding, the contents of the UDHR have been elaborated and incorporated into subsequent international treaties, regional human rights instruments, and national constitutions, and legal codes.[146] While there is a wide consensus that the declaration itself is non-binding and not part of customary international law[147], there is also a consensus that many of its provisions are binding and have passed into customary international law, although courts in some nations have been more restrictive on its legal effect. [148]

Article 10 of the UDHR provides that 'Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.' The legal instrument involves itself with justice administration. It acknowledges the important rule of justice. It states that everyone charged with a penal offence has the right to be

[144] Human Rights Law". www.un.org. 2 September 2015

[145] 70 Years of Impact: Insights on the Universal Declaration of Human Rights". www.unfoundation.org. 5 December 2018.

[146] The International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social and Cultural Rights (ICESCR) enshrine the rights in the UDHR into binding international law. These treaties protect civil and political rights like life, religion, speech, due process, and equality. Regional treaties like the European Convention on Human Rights, American Convention, and African Charter also incorporate the UDHR's rights into regional frameworks. National constitutions since 1948 often incorporate rights and principles from the UDHR, even if not explicitly referenced. Courts have used the UDHR to interpret national laws and constitutions, even though it is not directly binding law.

[147] Hurst Hannum, The universal declaration of human rights in National and International Law, p. 145

[148] For instance, the prohibitions against slavery and racial discrimination have achieved the level of customary international law, binding on all governments, as the International Court of Justice ruled in the Barcelona Traction case in 1970. The US Circuit Court determined in Filartiga v. Pena-Irala (1980) that the prohibition against torture had been incorporated into customary international law, granting domestic courts the authority to hear cases of torture committed abroad. Additionally, the International Criminal Tribunal for the former Yugoslavia found in 2002 that the UDHR's provision against protracted arbitrary detention was consistent with customary international law.

presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.[149] Moreover, it incorporates the proportionality and legality principles. It states that no one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.[150]

The UDHR is a remarkable achievement of humanity that has advanced the cause of human rights around the world in several ways. It has a global scope and aim, which means it applies to all humans regardless of race, gender, religion, nationality, or other status. Its substance is broad, which means it encompasses a wide variety of rights that are necessary for human dignity, freedom, justice, and peace. It has had a significant influence in that it has inspired numerous national constitutions, laws, policies, and practices that safeguard and promote human rights. It has also served as the foundation for several international and regional human rights agencies and entities tasked with monitoring and enforcing human rights norms. It is dynamic in nature, which means it may be understood and implemented in a variety of circumstances and situations, and it can change in response to changing times and requirements.

It is not, however, flawless, or comprehensive, and it needs continual monitoring and activity to guarantee its relevance and efficacy due to several arguments. Its status is

[149] A key human rights clause, art. 11(1) of the Universal Declaration of Human Rights, establishes the presumption of innocence as a fundamental legal right everywhere. It has had a significant impact on current standards and procedures in criminal justice.

[150] The prohibition of retroactive criminal punishment under Article 11(2) of the UDHR strengthens the principles of fairness, notice, and the rule of law. It continues to be a vital defense against the arbitrary use of state coercive power.

non-binding, which means it lacks the legal force of a treaty or obligation. It is dependent on governments' moral authority and political determination to respect and enforce its rules. It does not offer any remedies or consequences for violations, which means that victims of human rights violations do not have the right to petition or file a complaint. In addition, there is no worldwide court or committee to assess or enforce human rights concerns. It confronts cultural relativism and national sovereignty issues, which means that certain nations and organizations may argue that the UDHR does not reflect their values or interests, and that they have the right to set their own human rights standards and practices. It may not address some developing or current human rights concerns, which means it may not sufficiently handle some of the new problems or difficulties affecting human rights in the twenty-first century, such as climate change, digital rights, migration, terrorism, and so on.

4.1.2 The International Covenant on Civil and Political Rights

It is a multilateral treaty of the International Bill of Human Rights.[151] The United Nations General Assembly adopted Resolution 2200A (XXI) in 1966, promoting self-determination and respecting it. The United Nations Human Rights Committee monitors the International Covenant on Civil and Political Rights, reviewing reports from States parties. The Committee meets in Geneva and holds three sessions annually.[152]

The Covenant commits its state parties to respect the civil and political rights of individuals, including the right to life, freedom of religion, freedom of speech,

[151] Fact Sheet No. 2 (Rev. 1), The International Bill of Human Rights". UN OHCHR. June 1996.
[152] C. N. J. Roberts. "William H. Fitzpatrick's Editorials on Human Rights (1949)" [1948] 2 JALC 22.

freedom of assembly, electoral rights and rights to due process and a fair trial to name but a few. There is wide consideration that the covenant is foundational human rights texts in the contemporary international system of human rights. Article 14 of the Covenant stipulates the right to a fair trial. A fair trial[153] consists of legal representation to a party to a dispute. A fair trial[154] includes the right to be represented in a legal proceeding. Since a fair hearing involves the determination of rights and duties of the parties, legal representation is central to the right to a fair trial.[155] The ICCPR recognizes a broad range of civil and political rights and has been widely ratified by countries around the world, it has also faced several critiques, including a lack of enforcement, inadequate protection of certain groups, cultural sensitivity, limited scope, and limited participation. Addressing these critiques requires continued engagement and collaboration among States, civil society, and other stakeholders to ensure that the ICCPR's provisions are effectively implemented and enforced.

Tanzania has ratified the International Covenant on Civil and Political Rights (ICCPR). Tanzania ratified the ICCPR on 11 June 1976, and it entered into force in Tanzania on 11 September 1976. As a State Party to the ICCPR, Tanzania has committed itself to respecting, protecting, and promoting the civil and political rights recognized under the treaty, including the right to life, liberty and security of person, freedom of expression and religion, the right to a fair trial, and the right to participate

[153] Fair trial extending from the point of arrest, up to and including the trial, on the basis that the accused's rights are adversely affected from the moment that she or he becomes a suspect.

[154] The right to a fair trial has been accepted beyond dispute by every country (even if they do not always honour it). Fair trials not only protect suspects and defendants, they make societies safer and stronger by solidifying confidence in justice and the rule of law.

[155] Australian Law Reform Commission, Traditional Rights and Freedoms — Encroachments by Commonwealth Laws, Interim Report No 127 (2015) 279 [10.17].

in government, among others. Tanzania is also obligated to submit periodic reports to the UN Human Rights Committee, which is responsible for monitoring the implementation of the ICCPR by States Parties. Besides, Tanzania's Constitution[156] includes provisions on many of the civil and political rights recognized under the ICCPR, such as the right to life under article 14, freedom of expression under article 18, and the right to a fair trial under article 13.

The International Covenant on Civil and Political Rights (ICCPR) is crucial for justice administration due to its binding status, individual and inter-state complaints, remedies, and sanctions for violations. It reflects universal values and norms, recognizing the dignity and equal rights of all human beings, and respects cultural diversity. The ICCPR is adaptable to new challenges and situations, with the UN Human Rights Committee providing general comments and observations to update the meaning and scope of its rights.[157]

It is arguable that the International Covenant on Civil and Political Rights (ICCPR) faces challenges in administration of justice due to challenges in compliance, enforcement, and accountability. States parties may not fully respect or implement its provisions, and there is a lack of follow-up for non-compliance.[158] Additionally, the ICCPR may not adequately protect or promote certain civil and political rights, such as privacy, health, and sexual orientation. Critics argue that the ICCPR imposes a Western model of human rights on non-Western societies and may challenge the UN Human Rights Committee's legitimacy. Furthermore, the ICCPR may not adequately

[156] The Constitution of the United Republic of Tanzania of 1977 as amended from time to time
[157] Paul Sieghart, The International Law of Human Rights (Oxford University Press 1983) 25.
[158] Yonatan Lupu, 'Best Evidence: The Role of Information in Domestic Judicial Enforcement of International Human Rights Agreements' (2013) 67 International Organization 469.

address emerging human rights issues, such as terrorism, migration, climate change, and digital rights.

4.1.3 The United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

The United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, commonly known as the "Convention against Torture," was adopted by the United Nations General Assembly in 1984.[159]This Convention is a legally binding treaty that requires States to prevent and prohibit torture and other cruel, inhuman, or degrading treatment or punishment, and to ensure that victims of such acts have access to justice and receive adequate redress and rehabilitation.

In fact, the Convention against Torture has been ratified by over 160 States, making it one of the most widely ratified human rights treaties. It is monitored by the United Nations Committee against Torture, which reviews State reports and issues recommendations for improving compliance with the Convention. The Convention against Torture is a key instrument in the international legal framework for the

[159] The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the "Torture Convention") was adopted by the General Assembly of the United Nations on 10 December 1984 (resolution 39/46). The Convention entered into force on 26 June 1987 after it had been ratified by 20 States.The Torture Convention was the result of many years' work, initiated soon after the adoption of the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the "Torture Declaration") by the General Assembly on 9 December 1975 (resolution 3452 (XXX)). In fact, the Torture Declaration was intended to be the starting-point for further work against torture. In a second resolution, also adopted on 9 December 1975, the General Assembly requested the Commission on Human Rights to study the question of torture and any necessary steps for ensuring the effective observance of the Torture Declaration (resolution 3453 (XXX)). Two years later, on 8 December 1977, the General Assembly specifically requested the Commission on Human Rights to draw up a draft convention against torture and other cruel, inhuman or degrading treatment or punishment, in the light of the principles embodied in the Torture Declaration (resolution 32/62).

prevention and prohibition of torture and other forms of ill-treatment. Tanzania ratified the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) on 28 October 1986. UNCAT is an international human rights treaty that aims to prevent and prohibit torture and other cruel, inhuman, or degrading treatment or punishment worldwide. As a State Party to UNCAT, Tanzania has committed itself to take effective measures to prevent and prohibit torture and to provide redress for victims of torture under article 13(5) of the Constitution of the United Republic of Tanzania of 1977 as amended from time to time, which states that no person shall be subjected to torture or inhuman or degrading punishment or treatment.

The Convention against Torture is crucial for justice administration as it establishes legal obligations for states to respect and implement its provisions. It allows for individual and inter-state complaints, remedies, and sanctions for violations. Victims have the right to petition the UN Committee Against Torture, which can issue recommendations and economic sanctions. The Convention is based on universal values and norms, respecting diversity of cultures and traditions without violating human rights. It is adaptable to new challenges and situations, with the UN Committee Against Torture providing general comments and observations to clarify and update the prohibition of torture and ill-treatment. Conversely, the Convention on Torture (CAT) has flaws that may challenge the justice administration. States parties may not fully respect or implement its provisions, and there is a lack of accountability for non-compliance. The CAT does not cover all forms of torture and ill-treatment, and some acts may not be adequately prohibited or prevented. Critics

argue that the CAT does not reflect their values or interests, and that it imposes a Western model of human rights on non-Western societies.

4.1.4 The United Nations Standard Minimum Rules for the Administration of Juvenile Justice

The United Nations Standard Minimum Rules for the Administration of Juvenile Justice, also known as the "Beijing Rules," were adopted by the United Nations General Assembly in 1985.[160] These rules provide guidance on the treatment of children who come into conflict with the law, with a focus on promoting their rehabilitation and reintegration into society rather than punishment. The Beijing Rules outlines the following key principles governing the administration of justice. One, non-discrimination.[161] Two, best interests of the child.[162] Three, due process and fair trial.[163] Four, decriminalization.[164] Five, separation from adults.[165] Six,

[160] The United Nations Standard Minimum Rules for the Administration of Juvenile Justice (also known as "The Beijing Rules") were adopted by the UN General Assembly on November 29, 1985. The Beijing Rules reaffirm member states' pledges to "strive to create conditions that will ensure for the juvenile a meaningful life in the community, which, during that period of life when she or he is most susceptible to deviant behavior, will foster a process of personal development and education that is as free from crime and delinquency as possible," according to the rules.

[161] The United Nations Standard Minimum Rules for the Administration of Juvenile Justice, rule 22.2 requires juvenile justice personnel shall reflect the diversity of juveniles who meet the juvenile justice system. In addition, it states that efforts shall be made to ensure the fair representation of women and minorities in juvenile justice agencies. Hence, all political, social, sexual, racial, religious, cultural or any other kind of discrimination in the selection, appointment and advancement of juvenile justice personnel should be avoided in order to achieve impartiality in the administration of juvenile justice.

[162] The United Nations Standard Minimum Rules for the Administration of Juvenile Justice, rule 14.2 requires the proceedings to be conducive to the best interests of the juvenile and shall be conducted in an atmosphere of understanding, which shall allow the juvenile to participate therein and to express herself or himself freely.

[163] The United Nations Standard Minimum Rules for the Administration of Juvenile Justice, rule 14.1 states that the procedure for dealing with juvenile offenders shall in any case follow the minimum standards that are applied almost universally for any criminal defendant under the procedure known as due process of law.

[164] The United Nations Standard Minimum Rules for the Administration of Juvenile Justice, rule 13 prescribes that juvenile justice systems must seek to avoid the use of detention and criminalization of children whenever possible, and prioritize alternative measures that promote rehabilitation and reintegration.

access to education and vocational training.[166] What can be observed from the Beijing Rules is that they are not legally binding, but they provide a framework for the development of national laws and policies that prioritize the rehabilitation and reintegration of children in conflict with the law. They serve as a reminder to governments, legal professionals, and civil society of the importance of treating children in conflict with the law with compassion and respect, and of the potential for positive change and rehabilitation even in the most challenging circumstances. In Tanzania, the numerous legal and policy frameworks reflect the adoption of the Beijing Rules such as the Law of the Child Act[167], the Juvenile Court Rules[168], the National Strategy for Legal Aid[169] and the National Plan of Action to End Violence Against Women and Children[170].

Analytically, the Beijing Rules prioritizes the best interests of children in juvenile justice, ensuring their rights, welfare, and development are considered. They promote alternatives to detention, such as probation, community service, and counselling, to prevent deprivation and support rehabilitation. The rules protect juvenile rights, including the right to be informed, legal assistance, and the presumption of innocence. They advocate for specialized juvenile courts and promote global

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[165] The United Nations Standard Minimum Rules for the Administration of Juvenile Justice, rule 13.4 urging juveniles under detention pending trial to be kept separate from adults and shall be detained in a separate institution or in a separate part of an institution also holding adults.

[166] The United Nations Standard Minimum Rules for the Administration of Juvenile Justice, rule 13.5 requires children in conflict with the law must be provided with access to education and vocational training that will help them develop skills and prepare for a productive life after their release.

[167] The Law of the Child Act was enacted in 2009, establishes the legal framework for the protection of children's rights in Tanzania, including the administration of juvenile justice.

[168] The Children's Court Rules, which were enacted in 2010, provide guidance on the procedures for handling cases involving children in Tanzania.

[169] The National Strategy for Legal Aid, which was adopted in 2016, includes provisions for providing legal aid services to children involved in the justice system.

[170] The National Plan of Action to End Violence Against Women and Children, which was adopted in 2017, includes provisions for promoting the rights and well-being of children, including those involved in the justice system.

harmonization of standards. However, the Beijing Rules are not legally binding, limiting their enforceability and impact. Implementation depends on voluntary adoption and commitment from member states, leading to inconsistencies in juvenile justice administration. The rules do not address emerging issues, such as technology use or treatment of terrorism-related offenders. Limited resources and no monitoring mechanism hinder effective oversight and accountability.

It is the assertion of this study that while the United Nations Standard Minimum Rules for the Administration of Juvenile Justice provide valuable guidance for the treatment of juvenile offenders, their non-binding nature and potential variations in implementation may limit their global effectiveness and impact.

4.1.5 The United Nations Guidelines on the Role of Prosecutors

The United Nations Guidelines on the Role of Prosecutors, also known as the "UN Guidelines," were adopted by the United Nations General Assembly in 1990.[171] These guidelines provide guidance on the role and responsibilities of prosecutors in upholding the rule of law and protecting human rights. The UN Guidelines outline the key principles related to administration of justice. One, independence.[172] Next, impartiality.[173] Another, professionalism.[174] Furthermore, fair trial.[175] Likewise,

[171] Guidelines on the Role of Prosecutors, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, from 27 August to 7 September 1990 (UN Doc. A/CONF.144/28/Rev.1).

[172] The United Nations Guidelines on the Role of Prosecutors, guideline 2 (a) urges the Prosecutors must be independent and free from any improper influence, including political, economic, or other pressures.

[173] The United Nations Guidelines on the Role of Prosecutors, guideline 13 (a) obliges the Prosecutors must be impartial and objective in the performance of their duties, and must not be influenced by any personal, political, or other considerations.

[174] The United Nations Guidelines on the Role of Prosecutors, guideline 3 mandates prosecutors, as essential agents of the administration of justice, shall always maintain the honour and dignity of their profession. Also, guideline 4 adds that States shall ensure that prosecutors are able to perform their

protection of Human Rights.[176] A comment that I can put here is that the United Nations Guidelines on the Role of Prosecutors establish the role of prosecutors in the administration of justice, including their duty to act independently, impartially, and in the public interest. In Tanzania, the several legal and policy frameworks reflect the adoption of the UN Guidelines on the Role of Prosecutors such as the Constitution[177], the Criminal Procedure Act[178], the National Prosecution Policy[179], and the Code of Ethics for Prosecutors[180].

The guidelines emphasize the importance of prosecutors operating independently and impartially, ensuring fair and objective decision-making in the pursuit of justice. They promote adherence to the rule of law and respect for human rights, fostering a justice system upholding fundamental rights and principles. Prosecutors must act in the public interest, seek justice, and maintain professionalism. They encourage cooperation and mutual legal assistance across borders to combat transnational crime and uphold justice globally. On the other hand, the effectiveness of justice guidelines

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professional functions without intimidation, hindrance, harassment, improper interference, or unjustified exposure to civil, penal, or other liability.

[175] Prosecutors under guideline 12 of the United Nations Guidelines on the Role of Prosecutors are required to perform their duties fairly, consistently, and expeditiously, and respect and protect human dignity and uphold human rights, thus contributing to ensuring due process and the smooth functioning of the criminal justice system. Guideline 20 requires more that in order to ensure the fairness and effectiveness of prosecution, prosecutors shall strive to cooperate with the police, the courts, the legal profession, public defenders and other government agencies or institutions.

[176] The United Nations Guidelines on the Role of Prosecutors, guideline 12 states that prosecutors shall, in accordance with the law, perform their duties fairly, consistently, and expeditiously, and respect and protect human dignity and uphold human rights, thus contributing to ensuring due process and the smooth functioning of the criminal justice system. So, Prosecutors have a responsibility to protect human rights and to prosecute crimes that violate international human rights law.

[177] Tanzania's Constitution recognizes the role of prosecutors in the administration of justice and establishes the office of the Director of Public Prosecutions

[178] The Criminal Procedure Act provides the legal framework for criminal proceedings in Tanzania and sets out the role of prosecutors in investigating and prosecuting criminal offenses.

[179] The National Prosecution Policy, which was adopted in 2014, provides guidance to prosecutors on their roles and responsibilities in promoting and protecting human rights and ensuring access to justice.

[180] The Code of Ethics for Prosecutors, which was adopted in 2019, sets out the ethical standards that prosecutors are expected to uphold in the performance of their duties.

is questionable due to their non-binding nature, relying on voluntary adoption and commitment from member states. This can lead to variations in prosecutors' operations across jurisdictions, inconsistencies in application, and potential gaps in practice. Limited resources, such as funding, staffing, and infrastructure, can hinder the full realization of recommended standards. Additionally, there is no specific monitoring or enforcement mechanism, limiting the effectiveness and accountability of prosecutors in adhering to the principles.

The study contends that, while the United Nations Guidelines on the Role of Prosecutors provide valuable guidance for prosecutors' work, their non-binding nature, potential variations in interpretation, and lack of enforcement mechanisms limit their impact and uniform implementation across jurisdictions.

4.1.6 The European Convention on Human Rights

It is a regional human rights instrument. Its draft was made in 1950. It came into force on 3rd September 1954.[181] All Council of Europe members are the state parties to the convention. New members of the Council of Europe[182] must ratify the

[181] A global agreement to defend human rights and political liberties in Europe is known as the European Convention on Human Rights (ECHR; officially the Convention for the Protection of Human Rights and Fundamental Freedoms). The convention was drafted in 1950 by the Council of Europe, which had just been established, and it went into effect on September 3, 1953. The treaty is ratified by all Council of Europe member states and is expected to be ratified as soon as possible by future members. The European Court of Human Rights was founded by the agreement; it is sometimes referred to as the ECtHR. Anyone may file a lawsuit in court if they believe a state party has violated their rights under the convention. The states involved are required to carry out judgments that find infringement since they are binding on them. The Council of Europe's Committee of Ministers keeps an eye on how decisions are carried out, particularly to make sure that the funds the court awards applicants fairly compensate them for the harm they have suffered.

[182] Council of Europe is an international organisation founded in the wake of World War II to uphold human rights, democracy, and the rule of law in Europe. Founded in 1949, it has 47 member states, with a population of approximately 820 million, and operates with an annual budget of approximately 500 million euros

convention at the earliest possible opportunity.[183] Its main purpose is to promote, protect and enforce human rights and political freedoms in Europe. It is the most effective international treaty for human rights protection. It has a significant influence on the laws of the state members of the European Union. It has played important role in the development and awareness of human rights and freedoms in Europe.

Article 6(3) of the ECHR caters for the right to fair trial comprehensively. Several minimum rights constitute the right to a fair trial. Inter alia, access to legal representation is a significant minimum right therein.[184] Specifically, during the determination of rights, freedoms and obligations, everyone has the right to defend himself in person or through legal assistance of his choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require. The article which caters for the right to a fair trial including the right to legal representation requires non-restrictive interpretation because of its significance. In the case of *Perez* v *France*[185], the court observed that the right to a

[183] Sandra Guerrieri, 'From the Hague Congress to the Council of Europe: hopes, achievements and disappointments in a parliamentary way to European integration (1948–51)' (2014) 34 Parliaments, Estates and Representation 216.

[184] D. Vitkauskas, and G. Dikov Protecting the Right to a Fair Trial under the European Convention on Human Rights: A Handbook for Legal Practitioners. Second Edition, Strasbourg: Council of Europe, 2017

[185] (1995) 22 EHRR 153, Perez v France is a 2004 human rights case involving a French national who was assaulted by her two children in 1995. The applicant filed a complaint with the gendarmerie and joined as a civil party in the criminal proceedings. The case was dismissed in 1997, but the Indictment Division of the Paris Court of Appeal upheld it in 1998. The applicant appealed to the ECHR, claiming the procedure was unfair and a violation of Article 6 § 1 of the Convention. The ECHR found that the applicant had been denied effective access to the Court of Cassation, and that French law did not provide any remedy for civil parties dissatisfied with the Court of Cassation's decisions. The ECHR awarded the applicant 10,000 euros for non-pecuniary damage and 3,000 euros for costs and expenses. The UDHR has been incorporated into regional human rights frameworks, and many national constitutions since 1948 contain rights and principles drawn directly from it. Courts in many countries have used the UDHR to interpret national laws and constitutions, even though it is not directly binding law.

fair trial holds so prominent a place in a democratic society that there can be no justification for interpreting Article 6 of the ECHR restrictively.

The European Convention on Human Rights (ECHR) guarantees various civil, political, economic, social, and cultural rights, such as life, freedom of expression, fair trial, torture prohibition, and protection of private and family life. As a legally binding treaty, its provisions are enforced by the European Court of Human Rights which holds states accountable for human rights violations. The ECHR's judgments have influenced human rights protection globally, respecting subsidiarity and allowing member states to implement rights within their legal systems. The ECHR's interpretation has evolved, ensuring the Convention remains relevant and effective in protecting human rights in a changing world.[186] Notwithstanding, the ECHR's administration of justice is hindered by a significant caseload, leading to delays in processing and delivering judgments. Member states often comply with the ECHR, but non-compliance and delayed implementation can occur. The principle of margin of appreciation can lead to differing interpretations and applications, resulting in inconsistent protection of human rights across Europe. The ECHR's jurisdiction is limited to 47 Council of Europe member states, leaving individuals without adequate recourse for human rights violations outside this geographic scope.[187]

It is important to highlight that the European Convention on Human Rights is still a vital and powerful tool for human rights protection in Europe. Its legally binding character, independent monitoring system, and developing interpretation all

[186] George Letsas, 'The ECHR as a living instrument: Its meaning and legitimacy' in Gianluigi Palombella and Neil Walker (eds), Constituting Europe: The European Court of Human Rights in a National, European and Global Context (Cambridge University Press 2013) 106.

[187] George Letsas, 'The truth in autonomous concepts: How to interpret the ECHR' (2004) 15 European Journal of International Law 279.

contribute to the advancement of human rights norms and the promotion of justice in the area.

4.1.7 The African Charter on Human and People's Rights

The Charter came into effect on 21 October 1986. in honouring the date of human rights in Africa, 21st October was declared African Human Rights Day. The Assembly of Heads of African State and Government adopted a resolution calling for the creation of a committee of experts to draft a continent-wide human rights instrument. This is an international and regional human rights instrument. The general purpose of the charter is to promote and protect human rights and basic freedoms in the African continent.[188] It shares many features with other regional instruments, but also has notable unique characteristics concerning the norms it recognizes and also its supervisory mechanism.[189]

The African Charter on Human and People's Rights is relevant to the principles of administration of justice in different ways. First, it denotes the components of the right to a fair trial under article 7.[190] Second, it enshrines the equality before the law under article 3 which is closely linked with administration of justice.[191] Another is article 26 stipulating on the independence of courts for effective administration of

[188] The organisation of African Unity, African Charter on Human and People's Rights, 1981
[189] C. Heyns, The Essentials of Human Rights, 2005
[190] Article 7 explicitly guarantees the right to a fair trial. It emphasizes that every individual has the right to have their cause heard. It includes essential elements of a fair trial, such as the right to be heard, the presumption of innocence, the right to legal representation, the right to appeal, and the right to be tried by an independent and impartial court.
[191] Article 3 shows that the principle of equality before the law is closely related to a fair trial. It ensures that all individuals, without discrimination, have the right to equal protection of the law. Discrimination in the administration of justice could undermine the fairness of a trial.

justice.[192] Besides, article 10 enshrined legal representation and right to defence are necessary principles in the administration of justice.[193] Access to judicial remedies is an important principle of administration of justice as enshrined under article 25.[194]

The researcher contends that various clauses in the African Charter on Human and Peoples' Rights underline the importance of fair trial rights. These clauses emphasize the values of equality, judicial independence, legal representation, and protection from discrimination and torture. The Charter's goal is to ensure that Africans have access to a fair and unbiased judicial procedure, which is critical for protecting human rights and the rule of law. However, the influence of the Charter on the administration of justice is dependent on member states' commitment, the strength of their institutions, and the efforts of civil society and the legal community to fight for its values.

4.2 Conclusion

This chapter concludes that various international legal instruments and institutions exist to establish and enforce norms, standards, and principles that guide the administration of justice, protect human rights, ensure access to justice, and promote fair and effective judicial systems throughout the world. However, the international legal instruments and organizations involved in the administration of justice are frequently confronted with a variety of legal problems in their operations. These

[192] Article 26 underscores the importance of an independent and impartial judiciary. An impartial court is crucial for ensuring a fair trial. Any interference or pressure that could affect the decision-making process of the court is prohibited.

[193] Article 10 highlights the right to defence and the right to be assisted by legal counsel. Adequate legal representation is essential for ensuring a fair trial, especially for those who cannot afford legal representation.

[194] Article 25 ensures the right to seek remedies in a court of law for violations of rights. A fair trial includes access to effective judicial remedies to address any unfair or wrongful trial proceedings.

difficulties might include concerns of jurisdiction, collaboration, enforcement, and political impediments.

CHAPTER FIVE

DATA PRESENTATION, DATA ANALYSIS AND DISCUSSION OF THE FINDINGS

5.0 Introduction

Chapter five of this research offers a comprehensive analysis of Tanzania's administration of justice, scrutinizing the interplay between legal principles outlined in the country's constitution and their practical implementation. Focusing on Articles 107A (2) and 13(6), the chapter meticulously examines the day-to-day functioning of the Tanzanian judicial system, exploring key aspects such as impartiality, timeliness in justice delivery, victim compensation, dispute resolution, avoidance of procedural hurdles, fair hearings, presumption of innocence, protection of human dignity, and the prohibition of torture. Through an extensive review of empirical data, including case studies, legal precedents, statistical analyses, and judicial decisions, this section aims to uncover discrepancies and challenges in applying these principles. It seeks to offer critical insights into the alignment between legal statutes and their practical execution, providing recommendations for enhancing the integration of legal principles into Tanzania's judicial operations, thereby fostering a more equitable and efficient system of justice.

5.1 Key Principles of the Administration of Justice

The first specific objective of this study was to ascertain the key principles that govern the administration of justice in Tanzania's judicial system is important to establish the theoretical and legal framework for the research. Identifying these key principles provides the benchmark against which the statutory incorporation and

practical implementation can be analysed. Hence, the following accounts for the presentation of data, analysis of data, and discussion of the findings on the first objective and question of the research.

5.1.1 Data Presentation

Tanzania follows a common law system inherited from British colonial rule. The judiciary is independent of the executive and legislative branches. The court system consists of the Court of Appeal of Tanzania, the High Court, and lower courts including Resident Magistrate, District, and Primary Courts.

This study reveals that various principles govern the courts in the dispensation of justice. These principles are enshrined in the Constitution of the United Republic of Tanzania, especially Article 107A (2). It states as follows and I quote:

"In delivering decisions in matters of civil and criminal matters by the laws, the court shall observe the following principles, that is

(a) impartiality to all without due regard to one social or economic status;

(b) not to delay the dispensation of justice without reasonable ground;

(c) to award reasonable compensation to victims of wrongdoings committed by other persons, and by the relevant law enacted by the Parliament;

(d) to promote and enhance dispute resolution among persons involved in the disputes.

(e) to dispense justice without being tied up with technicalities of provisions which may obstruct the dispensation of justice."

Moreover, article 13(6) of the Constitution enshrines other principles, which are relevant and applicable in the administration of justice in Tanzania's judicial system. The article states as at this moment and I quote: -

"(6) To ensure equality before the law, the state authority shall make procedures which are appropriate or which take into account the following principles, namely:

(a) when the court or any other agency is determining the rights and duties of any person, that person shall be entitled to a fair hearing and the right of appeal or other legal remedy against the decision of the court or the other agency concerned;

(b) no person charged with a criminal offence shall be treated as guilty of the offence until proven guilty of that offence;

(c) no person shall be punished for any act which at the time of its commission was not an offence under the law, and also no penalty shall be imposed which is heavier than the penalty in force at the time the offence was committed;

(d) to preserve the rights or equality of human beings, human dignity shall be protected in all activities about criminal investigations and processes, and in any other matters for which a person is restrained, or in the execution of a sentence;

(e) no person shall be subjected to torture or inhuman or degrading punishment or treatment."

In addition, the overriding objective principle is among the key principles governing the administration of justice in Tanzania. Various laws made by the Parliament have incorporated this principle. Starting with section 3A of the Civil Procedure Code prescribes as follows

"3A.-(1) The overriding objective of this Act shall be to facilitate the just, expeditious, proportionate and affordable resolution of civil disputes governed by this Act.

(2) The Court shall, in the exercise of its powers under this Act or the interpretation of its provisions, seek to give effect to the overriding objective specified in subsection (1).

Also, section 3B of the Civil Procedure Code states further: -

"3B.-(1). To further the overriding objective specified in section 3A, the Court shall handle all matters presented before it to attain the following-

a) just determination of the proceedings;

b) (b)efficient use of the available judicial and administrative resources including the use of suitable technology; and

c) timely disposal of the proceedings at a cost affordable by the respective parties.

(2) A party to civil proceedings or an advocate for such a party shall have a duty to assist the Court in further overriding the objective of this Act and, to that effect, to participate in the processes of the Court and to comply with the directions and orders of the Court.

(3) The Chief Justice may make rules for better carrying out the provisions of sections 3A and 3B."

5.1.2 Data Analysis

The Constitution, the bedrock of our legal framework, is a meticulously crafted document that delineates foundational principles governing our judicial system. It

meticulously delineates the fundamental tenets of impartiality, equality, and justice, ensuring that these cornerstones form the essence of our legal ethos.

Among its multifaceted provisions, Articles 107A (2) and 13(6) stand as formidable guardians of justice and fairness. They stand as sentinels, safeguarding the core principles of impartiality, timely dispensation of justice, and the inherent right to a fair hearing and appeal. Furthermore, they espouse the sacrosanct presumption of innocence, the necessity for proportionate punishments, and the unequivocal prohibition of any form of torture or cruel treatment.

These constitutional provisions are not just legal clauses; they represent a pledge to ensure that every individual traversing the judicial realm is treated with dignity, fairness, and equity. The principles enshrined therein are not stagnant ideals, but rather a living embodiment of global benchmarks, incorporating the finest practices and standards upheld by independent and rights-focused courts worldwide.

Embedded within these constitutional articles is a commitment to upholding the rule of law, fostering equality, and zealously protecting the inalienable rights of every individual who comes within the ambit of our judicial system. They serve as a beacon, guiding the judiciary to navigate complexities while steadfastly adhering to the pillars of justice, equality, and human rights.

About the overriding objective principle, Statutory laws like the Civil Procedure Code also enshrine key principles such as the overriding objective of facilitating just, expeditious, proportionate and affordable resolution of disputes. The Civil Procedure Code directs courts to interpret provisions in light of this overriding objective. It also obligates parties and advocates to assist the court in furthering the overriding objective through their participation and compliance with court directions. This

demonstrates that efficiency, timeliness, and affordability are also key principles governing judicial administration alongside fairness and justice.

5.1.3 Discussion of the Findings

Tanzania's Constitution stands as a sturdy framework, meticulously outlining legal principles that serve as guiding lights for its judiciary. These principles, carefully articulated within its legal fabric, are designed to prioritize and advance the ideals of impartiality, procedural fairness, expeditious conflict resolution, and the unwavering protection of equality and human rights.

The constitutional underpinning underscores a profound commitment to a justice system aligned with global standards, embracing a rights-centric perspective that resonates with prevailing international norms. It signifies a conscious effort to harmonize Tanzanian jurisprudence with universally accepted principles of justice and human rights.

Despite the robustness of these constitutional principles, the actual realization and application within Tanzania's judicial landscape encounter impediments. There exist noticeable gaps between the aspirational ideals enshrined within the Constitution and the practical execution within the judicial system. These gaps manifest in various forms, spanning resource constraints, deficiencies in training, the looming spectre of corruption, and undue influence exerted by the executive branch.

Addressing these challenges necessitates a holistic and sweeping reform initiative, one that tackles the root causes inhibiting the effective translation of constitutional ideals into tangible judicial practices. Central to this reform agenda is the imperative

need to fortify judicial independence, institute robust mechanisms for accountability, and rekindle public trust in the judiciary.

By undertaking concerted efforts geared toward reforming the judicial sector, Tanzania can strive towards bridging the chasm between its formal constitutional principles and the on-ground reality. Such a transformation will not only fortify the country's democratic foundations but also bolster the rule of law, affirming Tanzania's commitment to a judiciary that truly embodies the constitutional ideals it espouses.

5.2 Practical Application of Key Principles of the Administration of Justice

The second objective and research question are intended to assess the practical application of principles governing the administration of justice in the day-to-day functioning of Tanzania's courts. Hence, this section of the chapter addresses the above-mentioned fundamental principles of the administration of justice in Tanzania's judicial system through data presentation, data analysis, and a discussion of the conclusions drawn from a few chosen principles, including overriding objective, legal representation, and speed track in their application.

5.2.1 Overriding Objective Principle

The core goal of the civil justice system is mentioned in the Overriding Objective Principle. It states that the goal of the civil courts and all parties involved in the legal process should be to resolve issues fairly and within reasonable means. Maintaining the overarching goal necessitates striking a balance between granting access to justice, upholding due process, and offering prompt and affordable dispute resolution

for all involved parties. It seeks to preserve the public's confidence in the civil justice system.

5.2.1.1 Data Presentation

In practice, it is revealed that there are inconsistent interpretations of the Court of Appeal of Tanzania to its applicability. For instance, in *Gaspar Peter* v *Mtwara Urban Water Supply Authority*[195], there was a call to the Court to apply the overriding principle to save an appeal which had been objected to for having missing documents accepted. The Court stated that the missing documents were not necessary for the disposal of the legal issues raised in the appeal.

In *Mondorosi Village Council and 2 Others* v *TBL and 4 Others*,[196] the call failed as the Court of Appeal refused, saying that such a letter is a necessary document to enable the Court to determine whether the appeal is within the prescribed time.

5.2.1.2 Data Analysis

The contrasting decisions in Gaspar Peter v Mtwara Urban Water Supply Authority and Mondorosi Village Council v TBL cases shed light on the divergent application of the overriding objective principle within Tanzania's judicial system, introducing a level of uncertainty and inconsistency in legal interpretations.

In Gaspar Peter v Mtwara Urban Water Supply Authority, the Court of Appeal exercised flexibility in its application of the overriding objective. Despite missing documents, the Court allowed the appeal, deeming the absent documents non-

[195] Civil Appeal No. 35 of 2017
[196] Civil Appeal No. 66 of 2017 (at Arusha)

essential to the case's resolution. This decision reflects a pragmatic approach, emphasizing the importance of the case's substance over procedural technicalities.

Conversely, in Mondorosi Village Council v TBL, despite a similar scenario involving missing documents, the Court declined to apply the overriding objective. Instead, it upheld strict procedural standards and disallowed the appeal due to the absence of documents. This decision underscores a rigid adherence to procedural requirements, prioritizing formality over the case's merits.

The conflicting approaches in these cases present a legal landscape fraught with uncertainty, creating inconsistencies in the application of the overriding objective principle. Such inconsistencies can undermine the predictability and reliability of legal outcomes, potentially leading to disparate judgments in cases with comparable circumstances.

This disparity in judicial interpretation highlights the need for clearer guidelines or precedents to ensure a more consistent and predictable application of the overriding objective principle within Tanzania's legal framework. Establishing clearer criteria or guidelines for determining the significance of missing documents in appeals could contribute to greater uniformity and coherence in judicial decisions, enhancing the overall fairness and effectiveness of the legal system.

5.2.1.3 Discussion of the Findings

The contradictory rulings within the Court of Appeal regarding the application of the overriding objective principle underscore the existence of inconsistencies in balancing procedural technicalities against the pursuit of substantive justice. This inconsistency engenders confusion among lower courts, leaving them uncertain

about whether to prioritize strict procedural adherence or to weigh the case's substantive merits.

The absence of a clear and consistent approach risks fostering judicial arbitrariness and undermines the very purpose of the overriding objective, which aims to facilitate access to justice. This lack of clarity can lead to disparate outcomes in similar cases, eroding the predictability and fairness of the legal system.

To address this issue, there is a pressing need for the Court of Appeal to articulate and establish clearer jurisprudence delineating the circumstances under which the overriding principle can reasonably and justifiably be invoked. By providing guidelines or precedents, the Court can offer essential direction to lower courts, helping them navigate the delicate balance between procedural compliance and the pursuit of substantive justice.

Greater coherence in applying the overriding objective principle is imperative to align the judiciary's decisions with the fundamental goals of substantive justice and the rule of law. This coherence will not only enhance the consistency and predictability of legal outcomes but also uphold the integrity of the judicial process, ensuring that justice is pursued in a fair and equitable manner across different cases and circumstances.

5.2.2 Legal Representation

Legal representation is the act of having a lawyer or attorney represent a party in legal proceedings. It is essential for a fair and just legal system, to ensure equality before the law. In criminal cases, the right to counsel is guaranteed, while in civil cases, parties must obtain their own lawyers or qualify for legal aid. Legal counsel's

responsibilities include investigating facts, advising clients, drafting documents, negotiating settlements, and representing clients in hearings and trials. Good representation requires ongoing communication and careful selection of lawyers.

5.2.2.1 Data Presentation

The practice of the principle of legal representation is seen in different cases. For instance, in the case of *Thomas Mjengi* v *Republic*[197], there was an appeal against the conviction and sentence, the judge found that the subordinate trial court erred in not informing the appellants of their right to free legal aid paid for by the state. Also, the subordinate trial court had no power to sentence the appellants to a term of imprisonment exceeding eight years. The judge also found that the mandatory minimum sentence of 30 years imprisonment and corporal punishment were unconstitutional and were not saved by the derogation clause in the constitution. The judge also found that the offence of armed robbery exists in the Penal Code.

The court observed that the trial was also a nullity because the appellants were not informed of their right to have legal representation. It added that the trial is a nullity because the appellants who are indigent were denied their statutory and constitutional right to legal representation paid for by the state.

Moreover, in *Haruna Said* v *Republic*[198] in an appeal, the judge of the High Court found that the trial magistrate had wrongly substituted a charge after acquitting the appellant of all the charges with a charge equivalent to the previous charges and convicted him. The judge also found that no evidence of theft had been adduced. The

[197] [1992] TLR 157 (HC).
[198] [1991] TLR 124 (HC).

case involved complicated issues of law, which required the trial magistrate to forward to the Chief Justice certified copies of proceedings and a recommendation that the appellant needed legal aid to conduct his defence. Mwalusanya J then was, observed that the right to a fair hearing under article 13(b)(a) of our Constitution carries with it the right to legal representation.

5.2.2.2 Data Analysis

The ruling by the High Court is a pivotal assertion of constitutional fair trial rights within the Tanzanian judicial system. By highlighting the imperative need to inform accused individuals of their entitlement to free legal representation, especially for those who are financially disadvantaged, the court underscores the fundamental principle of ensuring fair and just trials for all. This acknowledgement serves as a safeguard against the violation of the constitutional right to a fair hearing.

Emphasizing that the absence of legal aid for economically challenged accused individuals renders the entire trial null and void, irrespective of other procedural adherence, underscores the indispensable nature of legal representation in the pursuit of justice. This stance highlights that fair trials cannot be compromised, and the lack of adequate legal aid significantly obstructs access to justice, thereby diminishing the integrity of legal proceedings.

Furthermore, the court's assertion of its authority to review the constitutionality of legislation demonstrates a commitment to upholding the supremacy of the Constitution. By striking down mandatory minimum sentencing as unconstitutional, the judiciary showcases its role as a guardian of constitutional rights. This judicial

review not only safeguards individual rights but also contributes to the development of a more just and equitable legal framework.

The significance of this ruling extends beyond the immediate case; it solidifies legal representation as an integral aspect of the right to a fair trial enshrined in the Constitution. Additionally, the judiciary's willingness to scrutinize and invalidate legislation deemed unconstitutional reaffirms the court's commitment to upholding the constitutional values and principles that underpin the administration of justice in Tanzania.

5.2.2.3 Discussion of the Findings

The collective impact of these cases represents a significant stance taken by the higher judiciary in Tanzania towards safeguarding fair trial rights and ensuring access to justice for all individuals accused of crimes, especially those facing socio-economic disadvantages.

The rulings portray a noteworthy willingness on the part of the higher judiciary to rectify procedural errors evident in lower courts and to challenge unconstitutional legislative measures. This demonstrates a firm commitment to upholding the rule of law and ensuring that legal proceedings adhere to the highest standards of fairness and justice.

However, despite these judicial interventions, the persistent scarcity of resources allocated to legal aid remains a substantial barrier to fully realizing these principles within Tanzania's judicial system. The insufficiency of legal aid resources continues to hamper the effective implementation of fair trial rights, particularly for individuals who cannot afford legal representation. This ongoing challenge undermines the

practical application of the court's decisions, impacting the realization of justice for all.

In summary, the jurisprudence resulting from these cases signifies the judiciary's protective stance regarding due process rights and fair trial guarantees. Nevertheless, the existing practical hurdles, notably the shortage of legal aid resources, hinder the complete assurance of legal representation and fair justice within Tanzania's judicial system. Thus, while the court rulings affirm the commitment to upholding constitutional values, the persisting practical challenges highlight the need for concerted efforts to address resource deficiencies and ensure the effective implementation of these crucial principles in practice.

5.2.3 Speed Track of Cases

Speed track is a legal procedure designed to expedite the litigation process for less complex civil disputes. It focuses on reducing time to trial, legal costs, and complexity while preserving access to justice. Key features include strict deadlines for evidence disclosure, witness statements, settlement negotiations, and trial. Parties must affirmatively choose to use the speed track.

5.2.3.1 Data Presentation

The practice of the principle of speed track of cases is seen in actual cases in courts. For instance, in *Mgana* v *Palav and Others*[199], On 13th December 2007, learned counsel for the 2nd and 3rd defendants, Mr. Mustafa Chando filed a notice of Preliminary Objection that the suit is incompetent to proceed to hearing for non-

[199] Mgana vs Palav and Others (Civil Case 112 of 2000) [2008] TZHC 9 (18 August 2008)

compliance with the agreed Speed Track and that it ought to be struck out. The issue to be determined by this Court is whether the suit is incompetent to proceed to a hearing for non-adherence to the provisions of O. VIII A r. 3 (1) of the Civil Procedure Code and for being outside the Speed Track periods provided for under O. VIII A r. (3) (a) - (d)of the Civil Procedure Code. The court opined that at any rate, there is no provision under Order VIII of the Civil Procedure Code as amended by the Civil Procedure Code (Amendment of the First Schedule) Rules[200], which prohibits the court from hearing the case where no Speed Track has not been determined.

5.2.3.2 Data Analysis

The High Court's pronouncement elucidated that the absence of a speed track order does not serve as a hindrance to the court's adjudication of a case. It unequivocally affirmed the court's prerogative to proceed with the hearing and resolution of a case, notwithstanding the lack of formally designated speed track timelines.

By asserting its authority to adjudicate cases irrespective of the explicit establishment of speed track directives, the High Court reinforced the fundamental principle that legal disputes should be expeditiously resolved within the judicial system. This pronouncement underscored the overarching objective of ensuring timely justice delivery, emphasizing the intrinsic value of expeditious case resolution.

This judicial stance emphasizes that while speed-track orders are conducive to prompt case disposition, their absence should not impede the court's adjudicatory process. It reaffirms the court's duty to actively pursue the swift resolution of cases,

[200] G.N. No. 381 of 2019

aligning with the underlying ethos that timely justice administration is a paramount objective of the judicial system.

5.2.3.3 Discussion of the Findings

The court's ruling exemplifies a prioritization of expeditious justice delivery over procedural intricacies. It underscores a flexible approach towards the application of speed track rules, aimed at circumventing unnecessary delays arising from administrative nuances.

The court's willingness to prioritize timely resolution by not rigidly adhering to speed-track timelines in this instance could, however, potentially undermine the overall effectiveness of this framework. The absence of strict adherence to these timelines might diminish the intended impact of expediting case resolutions within the judicial system. To mitigate this, the establishment of clearer and more definitive guidelines is imperative. Such guidelines would foster greater compliance among judicial actors, thereby fortifying the efficacy of the speed track framework.

Although the case demonstrates a commitment to upholding the principles of expeditious trials, there remains a pressing need to fortify the implementation of speed track timelines and accompanying monitoring mechanisms. Strengthening these frameworks will serve to alleviate case backlogs significantly and ensure more consistent and predictable delivery of timely justice within the judicial system.

5.3 Inconsistencies in Principles of Administration of Justice: Law vs. Practice

The judicial landscape in Tanzania reflects several critical challenges that impede the unfettered operation of a robust and independent judiciary, undermining the

fundamental tenets of the rule of law. Notably, the encroachment of the executive branch into judicial processes curtails judicial independence, exerting undue influence and generating pressures upon judges, particularly in cases of political sensitivity. This intrusion restricts the judiciary's autonomy to dispense justice impartially, posing a direct threat to the foundational principles of a fair and unbiased judicial system.

Furthermore, a myriad of limitations compromises the realization of fair trial rights enshrined in the Constitution. Issues such as inadequate access to legal aid, limited information dissemination regarding legal rights, and prolonged trial delays collectively infringe upon the constitutional safeguards protecting fair hearing rights. These deficiencies erode the core principles of fairness and equality before the law.

A pervasive challenge lies in the inconsistent application of legal principles within the judiciary. Discrepancies in applying fundamental doctrines, such as the overriding objective, create a climate of uncertainty and arbitrariness, necessitating resolution to address conflicting jurisprudence and promote judicial consistency.

Equally concerning are the barriers obstructing access to justice, particularly for marginalized and disadvantaged groups. Factors like prohibitive court fees, complex procedural intricacies, language barriers, and a general lack of legal awareness collectively hinder access to justice, exacerbating societal inequalities.

The judiciary's operational efficacy is further hampered by capacity constraints, including an insufficient number of judges, inadequate training opportunities, and chronically under-resourced judicial institutions. These limitations significantly impair the efficiency and quality of justice dispensed by the judiciary.

Persistent concerns regarding perceived corruption within the judicial system perpetuate a crisis of public confidence and integrity. This ongoing perception of corruption undermines the legitimacy of the courts and erodes trust in the judicial process, necessitating robust measures to restore public faith in the judiciary.

Critical reforms, particularly in aspects related to judicial appointments, removal processes, and alignment with democratic ideals, are imperative to fortify the rule of law. Aligning these processes with democratic principles will bolster the judiciary's independence and credibility.

Lastly, the lack of enforcement of court orders, often marked by executive non-compliance with judicial decisions, erodes the authority and efficacy of the judiciary. This non-compliance undermines the judiciary's credibility and challenges its ability to uphold the rule of law effectively.

In summation, these multifaceted challenges underscore the imperative need for comprehensive reforms to safeguard judicial independence, ensure equitable access to justice, strengthen institutional capacity, and restore public trust in the judiciary's integrity and efficacy.

5.4 Conclusion

In conclusion, the analysis presented in this chapter underscores the intricate relationship between the codified legal principles governing Tanzania's administration of justice and their practical implementation within the judicial system. The examination of Articles 107A (2) and 13(6) of the Tanzanian Constitution elucidates both the alignment and the inherent disparities existing between legal tenets and their real-world application. The findings reveal

commendable efforts to uphold foundational principles such as impartiality, timeliness in justice delivery, fair hearings, and the protection of human dignity. However, challenges persist, notably in ensuring consistent adherence to these principles, mitigating delays, offering fair compensation to victims, and navigating procedural complexities without compromising justice. The discrepancies highlighted the call for a concerted effort to bridge the gap between legal ideals and their execution, necessitating reforms, clearer guidelines, enhanced resources, and capacity-building within the judiciary. Moving forward, the recommendations outlined herein aim to strengthen the integration of legal principles into the operational fabric of Tanzania's judicial system, ultimately fostering a more equitable, efficient, and rights-centric administration of justice for all its citizens.

CHAPTER SIX

SUMMARY OF FINDINGS, CONCLUSION, AND RECOMMENDATIONS

6.0 Introduction

This last chapter is dealing with summary of the findings, the conclusion of the study and recommendations on the observed challenges. The conclusion is focused on the nature, scope, findings, and analysis of the research. The recommendations have their foundations on the challenges and their analysis. The recommendations are specific based on the particularity of the challenge.

6.1 Summary of the Findings

This study examined the principles governing the administration of justice in Tanzania, their practical implementation, and their impact on ensuring fairness, impartiality, and access to justice for all individuals within the legal system. Through doctrinal legal research, the study critically examines both primary and secondary sources of law to gain insights into the administration of justice in Tanzania. As a result, the key findings revealed as follows

First, the overriding objective principle aims to ensure timely and fair administration of justice by avoiding unnecessary legal technicalities. However, there have been inconsistent interpretations by the Court of Appeal on its applicability, causing confusion for lower courts.

Second, constitutional limitations on rights and freedoms can hamper the administration of justice when cases relating to restricted rights come before the courts. An example is the declaration of unconstitutionality of provisions in the Law of Marriage Act which has not yet been amended by parliament.

Third, the right to legal representation is important for a fair trial but faces some limitations in practice, such as in primary courts where representation by advocates is restricted.

Fourth, ouster clauses that limit judicial review and finality clauses declaring certain decisions as final pose challenges to the administration of justice. Courts have tried to find ways to deal with such clauses through judicial interpretation.

Fifth, the law on speed tracks for civil cases aims to ensure timely case disposal but does not apply to primary courts. Lack of consequences for not determining speed tracks and lack of guidance when there is disagreement on speed track also create legal challenges.

Sixth, on the practical side, judiciary's policies being under the executive Ministry poses risks of inadequate consultation. Ministry also leads legal reforms affecting judiciary without its full participation.

Finally, outdated laws affecting the administration of justice have not been promptly reviewed by responsible ministries despite recommendations. This is hampered by lack of political will.

6.2 Conclusion

The administration of justice encompasses an essential segment of sustainable development. It creates a stable society whose members cherish their rights, freedoms, and duties without fear of losing them as there are effective means to dispense justice. It involves the judicial system working under legal guidance and judicial structure. Effective administration of justice requires effective legal and practical setups. The functioning of the judicial system in the administration of

justice engages interaction between courts, laws, facts, parties, government, and other stakeholders. The interaction between them works effectively if there are no challenges thereto. The challenges existing in the legal and practical setups may vitiate the administration of justice.

In this research, it is realized that of course, the judicial system of Tanzania faces numerous legal and practical challenges concerning the administration of justice. The challenges identified have roots in the way the laws were made to govern the judicial system in the administration of justice. Also, some of the challenges emanating from the practical point of view of the laws governing the judicial system in doing its work. One of the legal challenges observed in this research is the overriding objective principle and its applicability. The research reveals that there was a good intention of incorporating overriding objective principles in the judicial system through Constitutional provisions like article 107A(2)(e) urging the court not to be bound by unnecessary technicalities. The elaborate provision of overriding objective principle appears in section 3A of the Appellate Jurisdiction Act as well as sections 3A and 3B of the Civil Procedure Code. The intention here was to ensure to facilitate the just, expeditious, proportionate, and affordable resolution of civil disputes. However, the challenge observed in this research relating to overriding objective principle is numerous. One, the statutory incorporation of overriding objective principle applies in the determination of civil disputes in both the High Court, Resident Magistrates, and District Courts as per sections 3A and 3B of the Civil Procedure Code, appellate and revisional proceedings in the Court of Appeal of Tanzania through section 3A of the Appellate Jurisdiction Act. Hence, it does not statutorily apply to the primary code because the Civil Procedure Code is not

applicable there as well as there is no such provision in the Magistrates Courts (Civil Procedure in Primary Court) Rules which applies to the primary courts. Two, the absence of a similar statutory provision in the Criminal Procedure Act applies when it comes to criminal matters. Hence, it may seem that the overriding objective principle does not apply to criminal proceedings but it had to be applicable. Three, there are inconsistent applications of the overriding objective principle by the Court of Appeal of Tanzania through *Gaspar Peter* v *Mtwara Urban Water Supply Authority* and *Mondorosi Village Council and 2 Others* v *TBL and 4 Others*. This creates confusion for the lower courts when it comes to the application of the principle. Thus, justice may be vitiated through the application of the overriding objective principle. Four, there are no rules made by the Chief Justice of Tanzania as to the application of overriding objective principle as required by section 3B (3) of the Civil Procedure Code. This leaves a limbo that may affect the judicial system in the administration of justice.

Besides, the judicial system faces a challenge in the aspect of legal representation of parties in the proceedings. It is indisputable that legal representation is a constitutional right as per article 13(6)(a) of the Constitution of the United Republic of Tanzania. However, section 33 (4) of the Magistrates Courts Act allows legal representation by advocates in the primary courts when the proceedings are presided over by the resident magistrate in the primary court but not all primary courts are presided by the resident magistrates. Hence, the right to have an advocate in primary court may be vitiated if the matter is presided over by a primary court magistrate. Moreover, rule 31 of the Court of Appeal Rules as amended in 2019 imposes a limitation for an advocate to appear if he or she has not five years of experience. This

may affect the parties and judicial system at large to have legal representation in the court for the administration of justice.

Furthermore, the judicial system faces the ouster, finality, and limitation clauses when it comes to the determination of the rights and duties of people in the country. The ouster clauses take away the jurisdiction of the court, the finality clauses indicate the finality of the matter without remedies in case parties are aggrieved by the decision, and limitation clauses are clawback clauses restricting the enjoyment of rights, freedoms, and duties. Examples are Article 126(3), Article 7(2), Article 54(5), and Article 30 of the Constitution of the United Republic of Tanzania of 1977 as amended. This affects the court to administer justice as they are limited to executing their important task as they have been vested power to dispense justice.

Practically, the courts have been facing several challenges in the administration of justice through policies and judicial legislation. Regarding the making of judicial policies, the judiciary falls under the portfolio of the Ministry responsible for Constitutional and Legal Affairs. This structure affects the judiciary in administering justice in two ways. First, the judiciary does not have a direct consultative link with the Minister responsible for legal and judicial matters when it comes to making policy decisions concerning the Judiciary since there is no department at the Ministry specifically for dealing with judicial services, which could liaise with the Judicial Service Commission. Second, it runs the risk of undermining the Judiciary as the independent organ of the state, which makes it subject to the executive. Consequently, policy matters for and the budget of the Judiciary are considered alongside those of Ministries, Departments, and Agencies without paying any special attention to the special needs of the Judiciary.

6.3 Recommendations

Based on the exploration and analysis of legal and practical challenges facing the judicial system in the administration of justice, the research recommends as hereby indicated –

a) Legislative Recommendations to the Legislative Authorities

Based on the legal challenges observed in this research, the research recommends the following legislative amendments and making.

i) Statutory Amendment

The research recommends first the amendment of the Criminal Procedure Act to add a provision of overriding objective principle for criminal proceedings because there is no such provision in the Criminal Procedure Act

Second, the Magistrates Courts (Civil Procedure in Primary Courts) Rules should be amended to incorporate a provision of overriding objective principle therein to apply in the primary courts.

Third, the Court of Appeal Rules as amended in 2019 must be amended on rule 31 to allow the advocates with less than five years' experience of legal practice to have an audience in the Court of Appeal of Tanzania.

Fourth, section 33 of the Magistrates Courts Act requires an amendment to enable the advocate and public prosecutor to have the right of audience in the primary court even where the proceeding is not presided over by the resident magistrates in the primary courts.

Fifth, Order VIII Rule 22 as amended by the Civil Procedure Code (Amendment of the First Schedule) Rules requires an amendment to state what to do when the

presiding judge or magistrate does not agree with the parties on the appropriate speed track of cases.

Sixth, all laws which have ouster and finality clauses must be amended to remove them from the statute books because they face the judicial system in the administration of justice.

ii) Statutory Making

Based on section 3B (3) of the Civil Procedure Code, the Chief Justice is under obligation to make rules for better carrying out the provisions of sections 3A and 3B to cure the gaps and inconsistent applications of the overriding objective principle.

b) Practical Recommendations to Judiciary and Executive

First, there is a need for independent judicial administration of the courts in terms of three stages. The first stage in policy-making is consultation. The second stage is decision-sharing. The third stage is independence.

Second, the cultivation of political will on the part of the Government and some conflicting interests of some sections of our society to implement legislative proposals by the Law Reform Commission of Tanzania particularly in the area of marriage, inheritance, and succession to property upon death.

Third, the making of Judicial Education and Training Policy and Strategy to guide the implementation of sustainable continuing training and education programs for judicial and non-judicial officers.

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