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2. The Editor in Chief then sends the article to a reviewer for evaluation of the article and advises the Editorial Board on the following:
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 - be published as it is;
 - be published after corrections indicated by the reviewer;
 - not be published at all.
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IN PURSUIT OF TIMELY JUSTICE DISPENSATION: AN ANALYSIS OF THE LEGAL CHALLENGES FACING CASE MANAGEMENT SYSTEM AT THE HIGH COURT OF TANZANIA

Mustapher Mohamed Siyani Leonard Shaidi** Kulwa Gamba****

Abstract

The article analyses legal challenges facing the effectiveness of the Case Management System (CMS) applied in the High Court of Tanzania (HC) in the pursuit of Timely Justice Dispensation (TJD). As part of the Judiciary, the HC has jurisdiction to handle broad spectrum of cases. To this end, an effective CMS is crucial for the HC to fulfil its TJD constitutional mandate. However, this article, through empirical research using semi-structured interviews with Justices of Appeal, Judges, Registrars, Deputy Registrars, state attorneys and senior advocates, and documentary review, reveals that various legal issues hinder the CMS's effectiveness and cause case delays. Key challenges include laws unsupportive to CMS and the lack of comprehensive CMS rules. Laws unsupportive to CMS are illustrated by the lack of a robust scrutinization mechanism, discretionary or lengthy timelines for different case events, the conduct of

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criminal sessions, laxed adjournment control, unlimited preliminary objections, leniency with pleadings amendment and a lack of remedy for lapsed timelines. To address the analysed challenges, the article proposes legal reforms to enhance the effectiveness of the CMS applied in the HC and the promulgation of comprehensive CMS rules, thereby ensuring TJD.

Keywords: *Case Management System, Timely Justice Dispensation, Legal Challenges, Unsupportive Laws, High Court of Tanzania.*

1. Introduction

The adjudication of cases and the dispensation of justice in Tanzania is a constitutional mandate casted on the Judiciary of Tanzania (the Judiciary).¹ This mandate presupposes the determination of rights and liabilities of parties before courts of law in criminal charges and civil claims. In discharge of its mandate, the Judiciary is bound to dispense justice within the confines of the law, to do so impartially and expediently, while awarding reasonable compensation, promoting Alternative Dispute Resolution (ADR) and not being unreasonably bound to technicalities.² Operationally, the Judiciary is stratified into different levels such that its hierarchy, from the bottom up, includes Primary Court, District Court, Resident Magistrates' Court, High Court and the Court of Appeal which is the apex court. These courts enjoy different geographical, pecuniary, substance jurisdiction as provided by law. This article focuses on the discharge of the justice dispensation mandate by the High

¹ Constitution of the United Republic of Tanzania, Cap. 2 [R.E 2002] (Constitution), art 107A (1).

² Ibid art 107A (2) and 107B.

Court of Tanzania (the High Court / the Court) inclusive of the Commercial, Land and Labour High Court Divisions, and the effectiveness of the applied case management system to that effect.

Case management system denotes a mechanism for the effective administration of cases before the High Court from their filing to final disposal, used in the pursuit of timely justice dispensation.³ The system is based on the procedural laws which prescribe the methods for case management. An effective system requires the existence of the essential elements of cases management system, namely, scrutinization, scheduling of time and events and supervision.⁴ Being that the High Court, like the rest of the Judiciary, is limited by what the law allows or prohibits, effectiveness of the applied case management system in assisting it to discharged its timely justice dispensation mandate is directly affected by such limitation. While there may be a number of ways of studying such effectiveness, this article examines the legal challenges facing the High Court's case management system in ensuring timely justice dispensation.

³ Ipp, David A. 1997. "Case Management." *Consultus* 10: 36. <https://www.gcbsa.co.za/law-journals/1997/may/1997-may-vol010-no1-pp35-39.pdf>; Siyani, Mohamed M., Leonard Shaidi, and Kulwa Gamba. 2024. "Review of Case Management System in the High Court of Tanzania: Criminal Justice Perspective" 10 *Commonwealth Law Review Journal* 25. 10.55662/CLRJ.2024.1001.

⁴ Courts Administration Division (CAD), 'Case Flow Management: An Assessment of the Ontario Pilot Projects in the Ontario Courts of Justice' (Ministry of the Attorney General 1993) 1; Victorian Law Reform Commission (VLRC), 'Civil Justice Review: Report' (Report No. 14, 2008) 72 <<https://www.lawreform.vic.gov.au/wp-content/uploads/2021/07/VLRCCivilJusticeReview-Report.pdf>> accessed 26 May 2022.

2. Methodology

Aiming to advance an empirical discussion, this article uses documentary review and empirical approaches of research. Stakeholders thought to be apt for responding to this article's quest included Justices of the Court of Appeal who have appellate and revisional jurisdiction over the High Court, Judges of the High Court themselves who discharge the adjudicatory function to that court, Registrars and Deputy Registrars who facilitate judicial functions of the High Court, State Attorneys practicing in the High Court and Senior Advocates with 10 or more years of experience, who represent parties before the High Court and are considered officers of the court. The considered State Attorneys and Senior Advocates included those found within the jurisdiction of the Arusha, Dar es Salaam, Dodoma, and Mwanza High Court sub-registries which were visited.

With their informed consent, primary data was gathered from in-person and teleconference semi-structured interviews involving 252 respondents who were conveniently sampled. Such respondents included the Chief Justice of Tanzania, 18 Justices of the Court of Appeal, 69 Judges and 50 Registrars of the High Court, 52 State Attorneys, including the Attorney General (AG), Solicitor General (SG) and the Director of Public Prosecution (DPP) and 62 senior advocates with over ten years of practice experience. The interviews offered real life insights into the essential elements of case management system and their existence in the system applied in the High Court. Secondary data was collected from books, journals, theses, dissertations, papers, and authoritative reports. Data from such sources were analysed through content analysis and findings thereof presented

narratively. Moreover, the first author's experience as the Principal Judge of the High Court and the co-authors' experience as lectures of law, was essential in writing this article.

3. Legal Challenges Facing Case Management System in the High Court of Tanzania

While procedural laws lay the foundation on which case management system is built and are impetuous to its functioning, they are not without shortfalls. In the areas where the law is inadequate in its provisions, it presents challenges which diminish the possibility of achieving the intended results of a case management system. The existence of legal challenges was field tested using semi-structured interviews and questionnaire. 177 out of 252 respondents, equivalent to 69.9%, pointed out various legal challenges, which collectively indicate the existence of laws unsupportive to an effective case management system. The absence of comprehensive case management system rules was indicated by 64 respondents out of 252, equivalent to 25.3%, as a legal challenge facing the case management system applied in the High Court. Some of these respondents pointed out however that, case management rules do exist, but the same are scattered and insufficient.⁵ Conversely, 74 respondents, equivalent to 29.7% opined that the system did not face any legal challenge.

While the absence of comprehensive case management system rules is a singular challenge, the existence of unsupportive laws to

⁵ Interview with Anonymised Senior Advocate interview by Siyani, MM (24 February 2023, Kanisani Road - Arusha CBD, Arusha); Interview with Anonymised Deputy Registrar of the High Court, interview by Pima RA and Matovelo MA (03 May 2023, Kivukoni Road – Ilala CBD, Dar es Salaam).

case management system is a blanket challenge encompassing a number of specific challenges posed by various legal provisions. The latter challenge requires an illustration of the way laws are unresponsive to the applied case management system and how they affect its effectiveness in facilitating timely justice dispensation in the High Court.

3.1 Lack of Robust Scrutinization Mechanism

The scrutinization of cases filed in court presents a filtration mechanism which sorts between competent and incompetent cases, in theory, only allowing competent cases to proceed further to the effect of limiting the total workload of the court and focusing attention on cases worth the court's time.⁶ With such a consequence, it becomes imperative that the grounds and means through which cases are scrutinized and therefrom deemed incompetent to proceed be clearly, sufficiently and arbitrarily provided for by the law. Further, though scrutinization can be done at any stage of the case, the earlier it is done, the better the chances of weeding defective cases and fostering timely justice dispensation.

With this backdrop, the effectiveness of the case management system applied in the High Court, is hindered by the lack of a robust scrutinization mechanism. The scrutinization of an information presented to the High Court to commence original criminal cases is not provided for under the law.⁷ The registrar who

⁶ Woolf H, 'Review of the Working Methods of the European Court of Human Rights' (European Court of Human Rights 2005) 22 & 23 <https://www.echr.coe.int/documents/d/echr/2005_lord_woolf_working_methods_eng> accessed 24 June 2023.

⁷ Siyani, Shaidi, and Gamba (n 3) 28 – 9.

receives the information and in practice admits the same, is with neither the duty nor the power to screen the information to confirm its conformity with the prescribed form or content.⁸ Even if the registrar takes cognizance of such defects, the information cannot be rejected or returned for amendment. In effect then, an information would, in principle, be admitted, assigned, scheduled for plea taking and Preliminary Hearing (PH), continue to trial and result in a conviction notwithstanding defects apparent on its face.⁹

Convictions on defective information has not been a singular occurrence and in multiple occasions the Court of Appeal has nullified High Court convictions and sentences for having been based on defective charges. In the case of *Maveda Mashauri Majenga @ Simon v Republic*, the appellant approached the Court of Appeal for the second time following a retrial order from his first appeal.¹⁰ Originally, the appellant was charged with 11 other accused for murder vide Criminal Session Case No. 91 of 2010. Five of his co-accused were discharged following a *nolle prosequi* entered against them and eight co-accused went through the full trial. Being convicted alone, the appellant appealed for the first time to the Court of Appeal through Criminal Appeal No. 292 of 2014 where a retrial was ordered due to procedural irregularities.

The retrial order was executed; the appellant was retried and convicted for murder in Criminal Session Case No. 80 of 2015.

⁸ Criminal Procedure Act Cap 20 [R.E. 2022], s132, 135, 245 (6), 261 and 262.

⁹ Interview with Anonymised Justice of Appeal, interview by Siyani, MM (13 April 2023, Tunza Road – Ilemela, Mwanza); Interview with Anonymised Justice of Appeal, interview by Siyani, MM. (14 April 2023, Tunza Road – Ilemela, Mwanza).

¹⁰ *Maveda Mashauri Majenga @ Simon v Republic*, Criminal Appeal 255 of 2017 (TZCA) 1.

Dissatisfied, the appellant approached the Court of Appeal for the second time. On the second approach it was observed that the original information on which the trial court convicted the appellant and acquitted his 7 co-accused, was the same one used to retry the appellant. No amendment was prayed for or ordered by the court; the information charged the appellant to have committed the offence jointly with his co-accused who were not arraigned in court for the retrial and the High Court proceeded to retry and convict the appellant for having committed the offence together with other villagers (the co-accused). This oversight was neither noticed by the High Court nor the prosecution. On appeal, the second conviction was declared a nullity for being based on an information which was void *ab initio* and the appellant was released.¹¹

The facts of this case are similar to those in the cases of *Juma Gulaka & Others v Republic*.¹² In this second case example, the appellants were charged with two other co-accused in Criminal Sessions Case No. 136 of 2015 for having committed murder on 3rd February 2010. Their trial began on 1st July, 2015, the two co-accused were acquitted of murder and the three appellants were convicted in a High Court decision dated 9th October, 2017.¹³ Dissatisfied, they appealed to the Court of Appeal through Criminal Appeal No. 585 of 2017 where their first appeal resulted into a retrial order because the accused were not called to plead before their trial commenced. In May, 2022 through Criminal Session Case No. 136 of 2015, the appellants were retried and

¹¹ Ibid 2, 3, 6 – 9.

¹² *Juma Gulaka & Others v Republic*, Criminal Appeal No. 279 of 2022 (TZCA).

¹³ *Juma Gulaka & Others v Republic*, Criminal Appeal No. 585 of 2017 (TZCA) 1.

reconvicted for murder. Dissatisfied, they lodged a second appeal at which point the Court of Appeal noticed that the information which was used to retry the appellants contained five accused persons, including the two who were originally acquitted in the 2017 High Court decision nullified by the appellants' first appeal to the Court of Appeal.¹⁴ Consequently, the Court of Appeal held that the information was defective for including accused persons against whom no order or retrial was issued. It found that the appellants were prejudiced by such inclusion, nullified the High Court proceedings, judgment, and sentence for the second time and ordered the appellants release.¹⁵

The case of *Galula s/o Nkuba @ Malango & Others v The Director of Public Prosecutions* is another example of a conviction quashed by the Court of Appeal for being based on a patently defective information.¹⁶ The appellants were jointly charged with Maiku Pungate @ Samweli and Masunga Kashinje @ Kasala, fifth and sixth accused respectively, for murder in an information dated 11th August, 2017. During the plea taking and PH stage, the High Court was informed of the death of the fifth accused and the case against him accordingly abated.¹⁷ PH on 4th February 2018 and trial from 1st to 23rd October 2019 continued against the appellants and the sixth accused. The appellants were convicted and the sixth accused was acquitted.¹⁸ Dissatisfied, the appellants approached the Court of Appeal. There, the Court of Appeal took cognizance of the fact

¹⁴ Ibid 4.

¹⁵ Ibid 13.

¹⁶ *Galula s/o Nkuba @ Malango & Others v Director of Public Prosecutions*, Criminal Appeal No. 439 of 2019 (TZCA).

¹⁷ Ibid 3.

¹⁸ *Galula s/o Nkuba @ Malango & Others v Director of Public Prosecutions* (n 16) 4 & 5.

that, though the case had abated against the fifth accused following his death, the information which charged a total of six accused for murder was neither amended nor substituted to reflect such a change in circumstance.¹⁹ The Court of Appeal observed that an information is the foundation of a criminal case and as such it must be proper in form and substance as to avoid miscarriage of justice.²⁰ It opined that it was wrong for the High Court to proceed with the case without ordering amendment or substitution as per section 276 (2) of the CPA. By the appellants continuous plea on a defective charge every time the trial was resumed, the Court of Appeal on 4th October 2023 held that the appellants were prejudiced, quashed the High Court proceedings, judgment, and sentence. Being the appellants first appeal, a retrial was ordered.²¹

These three cases are prime examples of the value of scrutinization. In all cases, the only fault was the use of a defective information in that it contained accused persons who were not arraigned in two instances and deceased in one. A robust scrutinization mechanism would be expected to pick up and address this apparent defect. The case management system applied in the High Court does not provide for the scrutinization of the form or content of an information at its filing and admission stage, which is regarded as the first level of scrutinization, to the effect of allowing a defective information be a basis of conviction. Further, the cases clearly demonstrate how dependence on the second level of scrutinization, at which point the presiding Judge can order amendment or substitution of an information, is likely to fail.

¹⁹ Ibid 3 & 5.

²⁰ Ibid 8.

²¹ Ibid 14 – 16.

Arguably, a robust scrutinization mechanism which takes advantage of both levels of possible scrutinization at the earliest stage would be advantageous.

The three cases, again exemplify how an ineffective scrutinization mechanism is a hurdle to timely justice dispensation. In *Maveda Mashauri Majenga @ Simon v Republic* the appellant was in custody from 2014 when the retrial order was issued to 2021 when he was released.²² Equally in *Juma Gulaka & Others v Republic* and *Gabula s/o Nkuba @ Malango & Others v The Director of Public Prosecutions*, the appellants fate respectively was and remains in limbo for unnecessarily elongated periods of time as a result of lack of scrutinization.²³ Such uncertainty in the appellants fate, defeats the judiciary's vision for timely and accessible justice for all.

The challenge posed by a lacking scrutinization mechanism, also features in civil law. Though the law provides for the power to reject or return pleadings, with the exception of election cases and execution applications, it does not cast a specific duty on registrars to scrutinize pleadings at the time they are presented as a prerequisite to their admission.²⁴ This is the position of the law notwithstanding the opinion held by 88% of the responding registrars that scrutinization is one of the roles of a registrar. This opinion notwithstanding, different decisions of the High Court and the Court of Appeal indicate inconsistent execution of this

²² *Maveda Mashauri Majenga @ Simon v Republic* (n 10) 1 & 15.

²³ *Juma Gulaka & Others v Republic* (n 12); *Gabula s/o Nkuba @ Malango & Others v Director of Public Prosecutions* (n 16) 16.

²⁴ Civil Procedure Code Cap 33 [R.E. 2019] O. VI r16 – 18, VII r10 – 12, XXXIX r3(1), XLIII (1) (e); National Elections (Election Petitions) Rules GN. No. 782 of 2020 (Election Petition Rules) r9; High Court (Commercial Division) Procedure Rules G.N. No. 250 of 2012 (Commercial Division Rules) r19 (2).

duty. As a result, the absence of a legal duty for registrars to ensure that pleadings conform to the required form and content, has led to the conduct of cases which were later on found to be defective and were struck out.²⁵

For both criminal and civil cases, the lack of robust scrutinization mechanism has, in multiple occasions, allowed the entertainment of defective cases, whose defects were only realized during the judgment writing stage. On such discovery, the parties, after having been heard in full on merit, had to be recalled addressing the High Court on a defect which was present from the start of the case but was not picked up by the registrar nor the presiding Judge earlier. Such scenarios, where defects were noticed during judgment writing, the parties were recalled to address the Court and the Court's decision deals only with that defect, can be observed in the case of *Bagamoyo District Council v Koiya General Supply* where, after a full trial, the Court recalled the parties to address it on the Respondent's, original plaintiff's, capacity to sue which was answered in the negative and the trial court judgment was nullified.²⁶ Likewise, in the case of *Baclays Bank Tanzania Limited v Adam Mbagama and 4 Others*, on the day fixed for judgment, the parties were requested to address the Court on irregularities in the CMA records which casted doubt on the evidence used and the Arbitral award was quashed and the arbitration was ordered to be conducted afresh.²⁷

²⁵ *Ramadhani Pazi & Wambura Malima v Tanzania Civil Aviation Authority*, Labour Revision No. 325 of 2013 (TZHC); *Avecenna International Academy v African Foundation for Education and Development (afedev) Tanzania*, Civil Case 61 of 2021 (TZHC) 1.

²⁶ *Bagamoyo District Council v Koiya General Supply*, Civil Appeal No. 346 of 2021 (TZHC) 4.

²⁷ *Baclays Bank Tanzania Limited v Adam Mbagama and 4 Others*, Application for Labour Revision No. 07 of 2023 (TZHC) 7, 9.

Similarly, in the case of *Damas Nyakia (administrator of the Estate of Late Maningi Magesa) v Anthony Joseph Mugeta*, having been heard, the parties were recalled addressing the Court on the effects where the tribunal does not read the assessors' opinion to the parties before delivering its judgment. On hearing the parties on that issue observed during judgment writing, the Court, *inter alia*, struck out the appeal.²⁸ In the case of *Magrets Basso v Ferdinand Gilgo Lulu*, while composing judgment, the Court raised four points of law *suo motto*, recalled the parties to address it on them and proceeded to order the nullification of trial judgment and a rehearing of the case.²⁹ In the case of *Shukuru Mohamed Saidi and Others v Athumani Mohamed Manyanga, Begaya Paulo v Republic*, after a full hearing, the Court had to recall the parties to address it on whether the trial court judgment was valid by not addressing the second count with which the appellant was charged. The matter was remitted to the trial court for recomposing the judgment³⁰

In all cases, every defect or irregularity which made recalling the parties to address the Court during the composition of judgment necessarily was present when the case was being heard the first time. While there may be many reasons for such defects or irregularities not being picked up earlier, the fact that there is no specific duty to comprehensively scrutinize case documents for form and content propriety, before hearing is done, appears as one of such reasons. In these cases, it was the reading of the records before the Court, during judgment writing, which made the defects

²⁸ *Damas Nyakia (administrator of the Estate of Late Maningi Magesa) v Anthony Joseph Mugeta*, Land Appeal No. 11 of 2019 (TZHC) 2.

²⁹ *Magrets Basso v Ferdinand Gilgo Lulu*, Land Appeal No. 4 of 2022 (TZHC) 2, 10.

³⁰ *Shukuru Mohamed Saidi and Others v Athumani Mohamed Manyanga*, PC Civil Appeal 149 of 2019 (TZHC) 3; *Begaya Paulo v Republic*, Criminal Appeal 98 of 2020 (TZHC).

or irregularities apparent. With a duty to scrutinize documents, such reading can be done at an earlier stage, allow the Court to require to be addressed on such decisive issue and not have time spent to hear the parties on issues which, in light of the defects or irregularities, are inconsequential.

The lack of robust scrutinization mechanism renders the case management system applied in the High Court, unable to prevent the admission of cases which ought not to be admitted, something which causes delay in justice dispensation. This is exemplified by the presence of pending cases in the High Court, which cannot be adjudicated because of a notice of appeal to the Court of Appeal on interlocutory matters.

Appeals to the Court of Appeal start life by the filing of a notice of appeal with the High Court whose decision is to be challenged.³¹ By so doing, the High Court becomes aware of the intended appeal, prepares the necessary records of appeal and avails the same to the parties for onward production to the Court of Appeal.³² Admittedly, this position has, in practice, been changed by the use of E-CMS, where court records are developed electronically from the start and their move to the Court of Appeal is paperless, the law is however yet to reflect the developments brought by E-CMS. That notwithstanding, the law does not allow appeals or revisions from the High Court to the Court of Appeal on interlocutory decisions.³³ Being that appeals to the Court of

³¹ Tanzania Court of Appeal Rules G.N. No. 368 of 2009 (Court of Appeal Rules), r68 (1), 70, 83 (1), 85.

³² *Ibid* r71, 96.

³³ Appellate Jurisdiction Act, Cap 141 [R.E. 2019] (AJA), s5 (2) (d).

Appeal start life in the High Court, an ideal case management system should, in theory, be able to recognise that the intended appeal is against an interlocutory decision and inhibit its admission.

In practice however, appeals to the Court of Appeal, despite being barred by law, are admitted, and have the effect inhibiting the High Court from adjudicating the case against which the appeal is preferred.³⁴ This means that, cases in the High Court, while within its jurisdiction, remain pending as they await the determination of the interlocutory decision appeal by the Court of Appeal. Consequently, by the close of 2022, the Commercial Division had 72 cases which had been pending for more than 12 months, which is the maximum lifespan of cases in that division.³⁵ Out of the 72 cases, 31 cases had been pending because of there being a notice of appeal against interlocutory decisions of the Commercial Division.³⁶ By the close of 2023, the Commercial Division had 43 cases which had been pending for more than 12 months and 19 of such cases could not proceed because an appeal had been preferred against such cases on interlocutory decisions.³⁷

For a specialized division of the High Court aimed at expediently determining commercial dispute, having pending cases on account of appeals which are filed in its registry but ought not to exist, is a testament to the failure of the applied case management system in scrutinizing such appeals and inhibiting their admission. While the

³⁴ *Arcado Dennis Ntagazwa v Buyogela Julius Bunyambo* [1997] TLR 242, 248.

³⁵ Mkeha CP – Judge in Charge of the Commercial Division, interview by Pima RA and Matovelo MA (24 April 2023, Kivukoni Front/Luthuli Street – Ilala CBD, Dar es Salaam); Commercial Division Rules (n 24) r32 (2).

³⁶ Mkeha (n 35).

³⁷ *Ibid.*

law bars the filing of appeals on interlocutory decision which do not determine the case with finality, it does not provide for what should be done when such an appeal is filed. The High Court is not allowed or empowered to reject such an appeal. Without such authority, the legal bar against such appeals stands toothless.

As of recent, the use of E-CMS offers a solution against the filing of notices of appeal on interlocutory decisions by their automated rejection when the case against which the appeal is preferred is not marked 'decided'. However, this automated rejection has no backing in law thus capable of being challenged. Further, the remedy does not apply when the prevailing circumstances force a Deputy Registrar to accept physical filing of an appeal as allowed by law.³⁸ Consequently, despite the remedy offered by E-CMS, the argument for legal laxity, in the scrutinization of notices of appeal and the potential to have appeals on interlocutory decision delay cases before the High Court, remains valid.

3.2 Discretionary or Lengthy Timelines for Different Case Events

The question of the time it takes for justice to be dispensed is fundamental to the value of justice and it forms the vision of the Judiciary.³⁹ The case management system deployed in service of

³⁸ Judicature and Applications of Laws (Electronic Filing) Rule, G.N. No. 148 of 2018 (E-Filing Rules) r10 (3).

³⁹ Juma IH – Chief Justice of the Judiciary of Tanzania, interview by Siyani MM (05 May 2023, Kivukoni Road – Ilala CBD, Dar es Salaam); Judiciary of Tanzania, 'Judiciary Strategic Plan 2020/2021-2024/2025: Towards the Citizen-Centric Justice Delivery' (2020) (2nd JSP) 22 <<https://media.tanzlii.org/files/guidelines/2021-12/b5-Judiciary-strategic-plan-202021-202425-editted.pdf>> accessed 22 May 2022; Asrafuzzaman, ABM and Hasan GM, 'Causes and Redresses of Delays in Disposal of Civil Suits in Dhaka District Judge Court: An Empirical Study', *Dhaka University Law Journal* (Vol. 32, No. 2, 2021) 135 – 136 <

this vision, is expected to take cognizance, and provide for the primacy of time taken during the pursuit of justice by scheduling events and the time they are to consume. In as much as such legally scheduled time and events need to be accommodative of the special circumstance of each case, they must, in every other instance, be definite, capable of consistent application, leaving nothing to chance and of reasonable length. The case management system applied in the High Court, faces the legal challenge of having discretionary or lengthy timelines for various case events in the following manner:

3.2.1 Absence of legal timelines for admission and assignment

With the exception of economic and commercial cases, the law does not provide for a specific time period to be used between filing to admission and assignment for both civil and criminal cases.⁴⁰ The same day assignment requirement, which is inferable from circular directives, is limited in its legal force and leaves room for assignment beyond the filing date making its compliance administrative and inconsistent.⁴¹ Being the earliest stage in a case, only tasked with its registration and placement before a Judge, it is accepted that it can reasonably take between a day or two.⁴² While it can be argued that the admission and assignment stage does not

content/uploads/2023/01/Volume-32-2021.pdf> accessed 27 June 2022.; Mansoor and Ullah F, 'The Role of Civil Suits Delay in the Criminal Tendencies among the Litigants: Evidence from Khyber Pakhtunkhwa, Pakistan', *Journal of Development and Social Sciences* (Vol. 3, No. 2, 2022) 721 – 723 <[https://doi.org/10.47205/jdss.2022\(3-II\)65](https://doi.org/10.47205/jdss.2022(3-II)65)> accessed 02 January 2024.

⁴⁰ Economic and Organised Crime Control (The Corruption and Economic Crimes Division) (Procedure) Rules Government Notice No. 267 of 2016 (Economic Crimes Division Rules) r11.

⁴¹ Chief Justice's Circular No. 4 of 2018, para 7.

⁴² Interview with Senior Advocate, interview by Siyani, MM (24 February 2023, Kanisani Road – Arusha CBD, Arusha);

take an inordinate length of time as it used to, such time is still rarely within the same day it is filed.⁴³ Moreover, other than the times when admission is delayed by litigants' acts or omissions, delayed assignment of cases after they are filed, on account of different reasons, persist and cases can remain unassigned for between three and 14 days.⁴⁴ Out of 1023 cases filed in the Dodoma High Court Registry in 2023, only about 100 cases were assigned on the same day they were filed.⁴⁵ The absence of legally mandated timeline and the consequent use of discretion is arguably one of the causes of such delay, affecting the effectiveness of the High Court's case management system.

3.2.3 Lack of timelines for preliminaries

Preliminaries generally encompass all the activities or steps which a case goes through before its trial or hearing step starts. For this article, preliminaries do not include the admission and assignment steps. A review of the law and the steps criminal and civil cases go through, reveals that the law, generally, does not prescribe fixed time within which to resolve preliminary matter. For example, once a preliminary matter is raised, by way of objection or application, it has to be determined first before proceeding to hear the merits of the case. The period within which to conduct a hearing of such preliminary issues is not covered by law and as a result, cases wallow in the preliminaries protractedly.⁴⁶

⁴³ Ibid.

⁴⁴ Interview with Anonymised Deputy Registrar of the High Court, interview by Pima RA & Matovelo MA (27 March 2023, Hazina – Dodoma CBD, Dodoma); Interview with Senior Advocate, interview by author (24 February 2023, Kanisani Road – Arusha CBD, Arusha)

⁴⁵ Interview with Anonymised Deputy Registrar (n 44); *Being that admission occurs between filing and assignment, the time posts considered are only the filing and the assignment.*

⁴⁶ Original case file records of *Baraka Imanyi Tyenyi v T.ANE.SCO*, Land Case No. 10 of 2008, accessed from the Mwanza High Court Registry on 10 March 2023, *in this case*

In the event where timelines are prescribed, the prevalence of the extension of such timelines defeat their essence. For example, once a plaint is filed and served, a Written Statement of Defence (WSD) is to be filed within 21 days extendable by 10 days and once the WSD is served, a replay thereto, if any, has to be filed within the period ordered by the Court.⁴⁷ Before addressing the extension of these timelines and their effects, it is worth pointing out that the law, specifically the Civil Procedure Code (CPC), does not provide for limitation of the service period. Admittedly, the law caps the period for service of summons to 14 days.⁴⁸ However, that does not necessarily or expressly include service of the plaint or the WSD. As a result, even in circumstances where the parties are available, the service period may be unnecessary lengthy.⁴⁹

On the issue of prevalence of extension of the timelines, with civil cases, extension of time within which to file WSD can be applied for before the lapse of the original 21-days or within 7 days following the lapse of that period.⁵⁰ The application for extension, on reasonable ground, ought to be determined within 21 days and

pleadings were marked complete on 18th August 2011 and it remained in the pre-trial events or preliminaries step up to 07th August 2014 when the final PTC was conducted. Hearing was adjourned several times until 06th February 2015 when it started. A total of 35 months and 21 days elapsed before the pre-trial events were concluded.

⁴⁷ CPC (n 24) O. VIII r1 (1 & 3), 11 (1) & 13.

⁴⁸ CPC (n 24) O. V r6.

⁴⁹ Original case file records of *Meet Singh Gurbax Singh v Tanzania Railways Corporation*, Land Case No. 68 of 2017, accessed from the Arusha High Court Registry on 25 February 2023, *in this case, on 08th December 2017 the Plaintiff prayer to be served with the WSD. The same was ordered to be served by 14th December 2017, but it was until 15th March 2018 when service was effected*; Original case file records of *Christina Nikanoru v. Elifas Yairo Urio*, Execution No. 5 of 2021, accessed from the Arusha High Court Registry on 25 February 2023, *in this case, service of the application for execution too approximately 4 months.*

⁵⁰ CPC (n 24) O. VIII r1 (3).

the resulting extension is capped at 10 days.⁵¹ By this timeline, in theory at least, the potential of extension of time to file WSD beyond 10 days is almost unavoidable. Best case scenario, in the event that the application for extension is made on the 7th day following the lapse of the original 21 days, is then granted on the 21st day after being filed and the WSD is to be filed within 10 days thereafter, at the day when the WSD is filed, 40 days would have lapsed between the day the original 21 days lapsed and when the WSD was finally filed. Aggregately, 61 days would have lapsed between when the summons to file WSD was issued and when the WSD was actually filed. This legally prescribed timeline does not appear to have expedience as its priority, thus hurdling timely justice dispensation.

With criminal cases, commencement of proceedings in the High Court requires the filing of an information.⁵² However, such filing does not confer on the Court, the jurisdiction to entertain the matter. Such jurisdiction is subject to the filing of a committal order, born from proceedings in a committal court.⁵³ A subordinate court's issuance of a committal order is, *inter alia*, subject to that court having received the information filed in the High Court.⁵⁴ While circulars can be used to provide timelines, the law and the intimated circulars do not cover the time period within which registrars ought to transmit an information to the relevant subordinate court for committal proceedings.⁵⁵ In effect, the High

⁵¹ Ibid.

⁵² CPA (n 8) s245 (6).

⁵³ Ibid s243 (1); *Republic v Dodoli Kapufi & Another*, Criminal Revision No.1 & 2 of 2008 (TZCA) 25.

⁵⁴ CPA (n 8) s246 (1 & 2).

⁵⁵ Ibid s245 (7); Principal Judge's Circular No. 5 of 2019 para 3 & 4.

Court remains without jurisdiction to act on the information filed with it due to lack of a committal order and the supposed committing court cannot act to commit because of not having been or a delay in being served with the information.⁵⁶

This has, in instances, made cases remain pending for beyond a month without committal proceedings being conducted by the committing court.⁵⁷ This particular challenge is likely to be mitigated by the use of E-CMS where documents will be electronically available and thus easier to transmit and better guarded against their none or delayed transmission due to the risk of being misplaced or lost. However, as long as such transmission is not automated and would still require human input, the risk of none or delayed transmission of the filed information may not be completely and consistently averted especially where the law remains silent on when such transmission and the committing ought to be effected.

3.2.3 Length of speed tracks and individual cases steps

Mindful of the need to balance the forces between the maxim justice delayed is justice denied and justice hurried is justice buried, the time used in the adjudication of cases ought not to be too abridged or expedited to the effect of infringing on the parties right to a fair trial and the ability of the court to sufficiently apply itself to the matters at issue. Equally however, such time taken ought not to be inordinately long to the effect of rendering the pursuit of redress pointless. For instance, the quest to strike a balance

⁵⁶ *Republic v Nelson Mbalanji & Others*, Criminal Revision 4 of 2015 (TZCA) 2, 4; *Warioba Mvita v Republic*, Criminal Appeal 242 of 2018(TZCA) 8.

⁵⁷ Interview with Anonymised Deputy Registrar of the High Court (n 44).

between speed and effectiveness has birthed conflicting views on the time afforded by law within which to file a WSD in defence of a suit and 21-day window extendable by 10 days has been identified to be both the right length of time and too lengthy a period of time.⁵⁸ One of the respondents to the semi-structured interviews observed to the effect that 21 days is an unnecessarily long period of time.⁵⁹ Another respondent queried whether 21-days period was still necessary at the wake of the information and communication technology era and the presence of a High Court in almost every region.⁶⁰

While a WSD can be filed anytime from the issue of summons, the following day, at the fifth day or the 14th day, the 21-days allowance has the effect of creating the feeling in litigants and their advocates that they have ample time, a feeling which causes delayed preparation of the defence and at times requiring the extension of the original time period.⁶¹ Even in cases where the defence ought to reasonably be filed within 7 days, owing to the nature of the cases, the Court cannot order a shorter period on its own consideration.⁶² This reduces the Court's ability to control the

⁵⁸ Interview with Anonymised Judge of the High Court, interview by Matovelo MA (16 March 2023, Msamvu – Morogoro CBD, Morogoro); Interview with Anonymised Senior Advocate of the High Court, interview by author (02 May 2023, Kivukoni Road – Ilala CBD, Dar es Salaam); Interview with Anonymised Judge of the High Court, interview by Pima RA and Matovelo MA (22 March 2023, Hazina – Dodoma CBD, Dodoma)

⁵⁹ Interview with Anonymised Deputy Registrar of the High Court, interview by Pima RA & Matovelo MA (09 March 2023, Buswelu - Ilemela, Mwanza).

⁶⁰ Ibid.

⁶¹ Interview with Anonymised Judge of the High Court, interview by Matovelo MA (17 April 2023, Station Road – Nyamagana, Mwanza)

⁶² Ibid.

proceedings before it during the pleadings exchange stage and challenges the efforts for expedience.

On another front, speed tracks in civil cases are intended to give a time frame within which cases are to be determined. Such time frames range between 10 months and 24 months.⁶³ However, the law does not set the criteria with which a case can be labelled a fast, normal, complex, or special case so to warrant ordering the case to be determined within 10, 12, 14 or 24 months respectively.⁶⁴ In effect then, there are no objective means of determining which cases warrant a 24 months' timeline and which are better suited for shorter timeframes. This diminishes the ability of the Court to schedule time and events of the case and control proceedings before it by creating the possibility of inconsistent scheduling of cases in between different speed tracks, a possibility which fosters delay. So as to enhance timely justice dispensation, the law ought to be fashioned in such a manner which minimises the potential of cases with similar facts being arbitrarily ordered to run for distinct time periods. The current position of the law is not coached in that manner.

Further, various respondents who participated in informing this study, held the opinion that the 24 months' speed track is one of the legal challenges that faces the High Court's case management system.⁶⁵ With such a time period, Judges and the parties are likely

⁶³ CPC (n 24) O. VIII r22 (3) (a – d).

⁶⁴ *Ibid.*

⁶⁵ Interview with Anonymised Justice of Appeal, interview by author (15 April 2023, Tunza Road – Ilemela, Mwanza); Maghimbi S – Judge in Charge of the High Court Dar es Salaam Sub-Registry, interview by Matovelo MA (25 April 2023, Kivukoni Front – Ilala CBD, Dar es Salaam).

to lack the incentive to expedite a case's determination and can relax under the illusion that there is sufficient time.⁶⁶ Coupled with the fact that all speed track do not include the time spent in the preliminaries and only starts running after the first PTC or failure of court annexed ADR, any amount of time is significant and does not necessarily end up being the amount of time used to hear the parties.

It was found that the actual number of appearances and time taken to determine cases is rarely commensurate with the speed track selected. Between 2020 and 2023, the trend suggests that the average time taken in the determination of both civil and criminal cases has been on a steady decline. In 2020 the average time taken for cases between filing and determination was 380 days, a number which increased to 381 days in 2021, reduced to 321 days in 2022 and further to 264 days and 207 days for civil and criminal cases respectively in 2023.⁶⁷ With speed tracks II to IV which accrue from the failure of court annexed ADR, court records suggested that, up to three court appearances running for four to five months were enough to fully hear the parties on merit.⁶⁸ Such a time period

⁶⁶ Chuma WM - Chief Registrar of the Judiciary of Tanzania, interview by Pima RA and Matovelo MA (03 May 2023, Kivukoni Road – Ilala CBD, Dar es Salaam); Interview with Anonymised Judge of the High Court, interview by Pima RA & Matovelo MA (20 February 2023, Kanisani Road – Arusha CBD, Arusha)

⁶⁷ Chief Registrar, 'Comprehensive Performance Report of the Judicial Functions 2020' (Judiciary of Tanzania 2021) (Chief Registrar A) 19; Chief Registrar, 'Comprehensive Performance Report of the Judicial Functions 2021' (Judiciary of Tanzania 2022) (Chief Registrar B) 20; Chief Registrar, 'Comprehensive Performance Report of Judicial Functions - 2022' (Judiciary of Tanzania, 2023) (Chief Registrar C) Chapter II - 8; Chief Registrar, 'Comprehensive Performance Report of Judicial Functions - 2023' (Judiciary of Tanzania, 2024) (Chief Registrar D) 27.

⁶⁸ Original case file records of *Meet Singh Gurbax Singh v Tanzania Railways Corporation* (n 49); *Original case file records of Baraka Imanyi Tjenyi v TANESCO* (n 46 **Error! Bookmark not defined.**).

is half the time allocated by speed track I, three months less of the 2023 average time taken for civil cases and well below the speed tracks II to IV.

The legal challenge posed by the speed track timelines and specifically the 24-months timeline, is also observed in its misalignment with the Judiciary's strategic plan. Currently, the Judiciary is implementing its second strategic plan set to run between 2019/20 to 2024/25.⁶⁹ Access to justice and expeditiousness forms the second pillar of that strategic plan which has efficient and effective judicial services as its key results area and increased efficiency in case disposal as the first strategic objective thereunder.⁷⁰ The efficiency part of the result framework for monitoring implementation of the second JSP aims to reduce the average number of days a case takes in the High Court from filing to decision from the 730 days baseline to 513 days by 2025.⁷¹ The 24-months speed track from when the court annexed ADR fails means that the case ought to be decided within 730 days thereafter, a number of days which does not include all the time spent between the filing of the case to the point of failure of court annexed ADR. Such a timeframe allowance works against the Judiciary's efficiency strategic objective which aims to cap the average number of months a case spends between filing and decision, inclusive of all the steps, at an average maximum of 513 days or 17 months. This disparity between the Judiciary's strategic objective and the law is at the expense of timely justice dispensation.

⁶⁹ 2nd JSP (n 39).

⁷⁰ Ibid 24.

⁷¹ Ibid 60.

4. Conduct of Criminal Sessions

The law requires all criminal cases originally triable by the High Court to be heard by way of session.⁷² However, the law does not indicate the number or interval of sessions to be conducted per year, the number of cases which ought to be scheduled for such sessions, the time period within which sessions are to be conducted after the plea taking and PH step is complete, and it does not indicate how long a criminal session should take nor how long the whole criminal case should last in court. By not providing for these issues, the applied cases management system is lacking in the scheduling of time and events and control elements in so far as the conduct of criminal sessions is concerned, something which impedes the possibility of achieving timely criminal justice dispensation. Consequently, the exclusive use of sessions to adjudicate original criminal cases has been identified as a cause of delay since the early days of the use of circuit court sessions and equally so in recent times.⁷³

As a result, criminal sessions are conducted subject to being so scheduled by the responsible registrar and in practice they are mostly conducted quarterly subject to the availability of funds and

⁷² CPA (n 8) s179

⁷³ Feingold RE, *Colonial Justice and Decolonization in the High Court of Tanzania, 1920-1970* (Cambridge Imperial and Post-Colonial Studies Series, Palgrave Macmillan, 2018) 61; Judiciary of Tanzania, 'Report on Identification of Setbacks in Criminal Justice Policies, Laws and Procedures Causing Case Delays in Tanzania' (2023) (Judiciary of Tanzania – Setbacks in Criminal Justice) 5; Othman MC, 'Ripoti ya Tume ya Kuangalia Jinsi ya Kuboresha Taasisi za Haki Jinai Nchini, (Ofisi ya Raisi, 2023) 117 – 119; Mwakitalu S - Director of Public Prosecution, Interview by RA Pima and MA Matovelo (Kivukoni Road – Ilala CBD, Dar es Salaam, 29 April 2023); Hosea EG - President of Tanganyika Law Society, interview by Siyani MM (Kivukoni Road – Ilala CBD, Dar es Salaam, 09 May 2023).

the court calendar.⁷⁴ The availability of funds dictates the number of sessions scheduled per year. This has had the effect of leaving cases mature for hearing, unheard for two years and more, something which delays criminal justice.⁷⁵ By the close of 2022, though 74% of the scheduled sessions were conducted and 90% of the cause-listed cases were determined, 1,267 cases involving 1,858 accused persons, who were remanded in prisons around the country, stood pending.⁷⁶

The trend of criminal sessions between 2020 and 2023 illustrates the inherent weaknesses of and in their use. In 2020, out of the 133 scheduled sessions, 118 were conducted across 16 High Court sub-registries and 741 cases were determined through such sessions.⁷⁷ In 2021, out of 146 scheduled sessions, 117 were conducted across 17 High Court sub-registries and 825 out of the 950 cause-listed cases were disposed by those sessions.⁷⁸ In 2022, out of 135 scheduled sessions, 100 were conducted across 16 High Court sub-registries plus the Economic Crimes Division, excluding the Morogoro, Manyara and Musoma sub-registries, and 696 out of the 773 cause-listed cases determined by the conducted sessions.⁷⁹ In 2023, out of the 849 cause-listed cases, 739 cases were determined through the routine and special sessions.⁸⁰ This trend

⁷⁴ Judiciary of Tanzania - Setbacks in Criminal Justice (n 73) 5.

⁷⁵ Ibid; Original case file records of *Republic v. Petro Fabiano @Tarmo*, Criminal Session No. 12 of 2019, accessed from the Arusha High Court Registry on 25 February 2023. *In this case three years, two months and six days lapsed between when PH was done to when the trial session commenced.*

⁷⁶ Othman (n 73 **Error! Bookmark not defined.**) 118.

⁷⁷ Chief Registrar A (n 67) 20.

⁷⁸ Chief Registrar B (n 67) 21 – 22.

⁷⁹ Chief Registrar C (n 67) Chapter II – 9.

⁸⁰ Chief Registrar D (n 67) 27.

demonstrates that only a few sessions can be conducted in a year and in a span of three years, 2020 to 2022, only a couple of hundred sessions can successfully be conducted, and in that case 335 session were conducted.

Again, comparatively, only a limited number of cases can be determined and after four years, 2020 to 2023, only 3,001 cases were determined. By the close of 2022, 1,267 cases, 234 cases shy of a half of the cases determined by criminal sessions between 2020 and 2023, were awaiting to be determined.⁸¹ In the end, criminal sessions, by being subject to fund availability and the registrar's notice to that effect, and by the number of sessions to be conducted not being set by law, they are bound not to have 100% efficacy.

It is worth noting that the office of the Principal Judge issued a circular to cover this legal lacuna. The circular directed that, with each session, a minimum of eight cases for trial and 10 cases for plea taking should be scheduled and should last for a month, with 20 working days.⁸² Other than this circular directive being unenforceable in law, as is the general case for all circulars, it is contradicted in part by another circular from the office of the Principal Judge which requires plea taking to be done without waiting for sessions.⁸³

The general conduct of sessions, in the context of this discussion, is a colonial heritage which was necessary owing to the low number

⁸¹ Othman (n 73) 118.

⁸² Principal Judge's Circular No. 3 of 2004, para 6.

⁸³ Principal Judge's Circular (n 55) para 7

of judges and the existence of very few High Court registries.⁸⁴ In the criminal justice history of the Tanganyika territory, Tanganyika Republic and Tanzania, the conduct of criminal sessions was indispensable due to various reasons such as limited number of Judges versus the population they served, sparsely located High Court centres and insufficient workload justifying stationing a Judge.⁸⁵ Though those factors may still linger as situational realities, the current trend where the Judiciary has and is investing in building and opening High Court registries across all regions in the country, embarked on transforming itself into being able to equally operate physically and electronically and has continued to engage stakeholders at all levels so as to enhance a systemic pursuit and probability of expedience.⁸⁶ calls for legislative discussion on the contemporary appropriateness of the statutory imperative to have original criminal cases to the High Court exclusively determined by sessions. Not to say that the conduct of criminal sessions is without its critical benefits, but the effects of its shortcomings are equally, if not more so, dire.

4.1 Adjournments

When parties approach the Court, they seek assistance for the determination of their rights and liabilities. This pursuit for a legally binding and enforceable decision can be made more gruesome where it is systemically or unreasonably prolonged. This pursuit of right and its frustration caused by adjournment led to the opinion

⁸⁴ Swanepoel P, 'Transient Justice: Colonial Judges on Circuit in Interwar Tanganyika', *Stichproben: Vienna Journal of African Studies*, (Vol. 13, No. 24, 2013) 75, 77 & 85 <<https://www.africabib.org/rec.php?RID=39279974X>> accessed 08 March 2024.

⁸⁵ Ibid; Feingold (n 73) 60, 61, 97 – 99.

⁸⁶ Chief Registrar D (n 67) 52 – 56.

held by 21 out of 42 responding litigants, that adjournments delay dispensation of justice.⁸⁷

The implication of the legal provisions allowing adjournment, is instrumental in delaying justice dispensation. In civil cases, while once the hearing of case starts, it ought to continue consecutively until it is complete, the law allows for it to be adjourned beyond the following day for reasons to be recorded.⁸⁸ This, challenges the efficacy of the applied case management system to facilitate timely justice dispensation because, unless such adjournments are at the instance of the Court, the law neither limits the number of times a case can be adjourned nor the length of each such adjournment.⁸⁹ In these cases, the legal prohibitions against adjournments and their ‘on sufficient cause’ prerequisite is undercut by the legal ability of the Court to adjourn a case without specifying the next date when such case shall be called for further steps.⁹⁰ The possibility of cases being adjourned *sine die*, such that they would remain pending for between 12 months and 3 years before they are dismissed for inaction⁹¹, has the potential of cluttering registries unnecessarily, creating uncertainty in the parties standing and ultimately delaying justice.

With criminal cases, adjournments are allowed in situations where witnesses are unavailable, the hearing cannot proceed immediately

⁸⁷ Siyani, MM., and Gamba K, ‘The Quest for Timely Civil Justice Dispensation: A Discussion of Case Management System Applied in the High Court of Tanzania’, *University of Bologna Law Review* [forthcoming, 2024].

⁸⁸ CPC (n 24) O. XVII r1 (3) (a).

⁸⁹ *Ibid* sr3 (f).

⁹⁰ *Ibid* r1 (1, 3 (a – e)), 2, 4 & 5.

⁹¹ *Ibid* r2, 4 & 5.

after PH or on any other reasonable cause.⁹² Not only does the law provide blanket grounds for adjournment, it does not limit the number of adjournments per case and does not limit the length of an adjournment, only that it should be reasonable. While the unavailability of witnesses can be a reasonable ground for adjournment, by the letter of the law, the room for adjournments on that ground is infinite even when the unavailability or non-production of witnesses is malicious or due to unscrupulous practice. The Court does not have the power to dismiss cases on account of failure of the prosecution to produce witnesses and will have to adjourn the case until such witnesses are availed, the prosecution withdraws its case or either party closes their case.⁹³ This reality reduces the Court's control over proceedings before it.

The need to limit adjournments in criminal justice dispensation is not a novel position of law. Contrary to the practice in the High Court, the criminal procedure practice in subordinate courts limits adjournment lengths to 3, 7, 15, 30 or up to 60 days subject to the absence of a prison within a 5-mile radius of the court, the accused being remanded to prison or out on bail, the adjournment being on the accused's request or the nature of offences.⁹⁴ Arguably, the practice difference between the High Court and subordinate courts is justified by the High Court's use of sessions to try its original criminal cases such that the law cannot reasonably limit the number

⁹² CPA (n 8) s192 (5), 284 (1); Economic and Organized Crime Control Act Cap 200 [R.E. 2022] (EOCCA), s35 (4).

⁹³ Interview with Anonymised State Attorney – NPS, interview by Siyani MM (23 February 2023, Kanisani Road - Arusha CBD, Arusha); *Director of Public Prosecutions vs Mussa Lyambelo @ Seba Akenjive & Another*, Criminal Appeal 156 of 2015 (TZCA) 11 – 13.

⁹⁴ CPA (n 8) s225 (2, 3 & 4).

or length of adjournments. This justification behind the practice difference, though valid, further illustrates the challenge with the use of criminal sessions. At any rate however, the uncertainties or discretion created by law on civil and criminal procedure, as to the number and length of adjournments, affects the Court's ability to effectively control proceedings before it, in that the Court is without any objective means of measuring and safeguarding against an unreasonable number or length of adjournment.

4.2 Unlimited Preliminary Objections

Preliminary Objections (PO) is an interjection by the parties or their advocates during the proceedings where they raise a point of law requiring the Court's immediate attention as it carries the potential of bringing the matter to an end.⁹⁵ Such interjections, though not legislatively defined, have been a subject of a plethora of cases which have formed precedents of its conduct.⁹⁶ While it is a matter of case law and legislation, that POs are not to be raised without prior notice to the other party, case law allows them to be raised at any point, and impliedly as many times before judgment is issued.⁹⁷ The allowance by case law, though justified in instances where objections affect, *inter alia*, the jurisdiction of the Court to

⁹⁵ *Musanga Ng'andwa v Chief Japhet Wanzagwi & Eight Others*, [2006] TLR 351; *Sugar Board of Tanzania v 21st Century Food and Packaging & Two Others*, Civil Application No. 20 of 2007 (CAI); *Mukisa Biscuit Manufacturing Company Ltd v West End Distributors Ltd* [1969] EA 296.

⁹⁶ *Musanga Ng'andwa v Chief Japhet Wanzagwi & Eight Others*; *Sugar Board of Tanzania v 21st Century Food and Packaging & Two Others*; *Mukisa Biscuit Manufacturing Company Ltd v West End Distributors Ltd* (n 95).

⁹⁷ CPC (n 24) O. VIII r2; *Registered Trustees of the Baptist Convention of Tanzania (Jumuiya Kuu Ya Wabatisti) v James Kasomi & Others*, Misc. Civil Application No. 35 of 2021 (TZHC) 5 – 7; *Zaidi Baraka & Others v Exim Bank Tanzania Limited*, Civil Appeal 194 of 2016 (TZCA) 11; *Alex Chuma Kapama v Registered Trustees of Jumuiya ya Maendeleo KIJICO & Others*, Misc. Civil Application No. 38 of 2023 (TZHC) 11.

entertain the matter, waters down the statutory requirement that preliminary objections must be raised together with or at the point of filing the WSD.⁹⁸ This affects the Court's ability to control proceedings before it, even when expedience is its intention, by leaving the potential for preliminary objections to be raised at advanced stages of the case and adding to the time used in determining a suit, especially where they do not meet the necessary criteria for a potentially successful PO.

For instance, in the case of *Abdul Rajabu Zaboro (Administrator of the Estate of the Late Rajabu Zaboro) v. Kuringe Real Estate Company Ltd & 2 Others*, advocate for the defendant raised POs when the case was called for hearing of the forth defence witness.⁹⁹ Other than the objections being raised at an advanced stage, it was the second time that the defendants raise POs, after having withdrawn the first POs without leave to refile.¹⁰⁰ Having been tabled on 25th April, 2023 and struck out on 02nd June, 2023 the raising of POs for the second time added thirty-eight days to the total determination period. This speaks to the effect of the law not limiting when and how many times POs can be raised.

Though case law clearly defines the standards which a PO has to meet, both case law and legislation do not provide for a scrutinization mechanism so that only POs which are on a pure point of law, obvious on the face of the pleadings, do not require further evidence or the invocation of discretion and have the actual

⁹⁸ CPC (n 24) O. VIII r2.

⁹⁹ *Abdul Rajabu Zaboro (Administrator of the Estate of the Late Rajabu Zaboro) v Kuringe Real Estate Company Ltd & 2 Others*, Land Case No. 193 of 2021 (1stZHC) 1 - 2.

¹⁰⁰ *Ibid* 14 – 17.

potential of bringing the matter to a close, are entertained and determined. The law sets up neither, a scrutinization mechanism for, nor a duty to scrutinize the raised POs which has resulted in the entertainment of POs which do not qualify as such and have caused the delay in determination of cases. For instance, in the case of *TIB Development Bank Ltd v. Dr. Milcab Kalondu Mrema and Arusha Blooms Limited* filed in 2014, a PO on the first Defendant's and Plaintiff to the counter claim's *locus standi* to sue, was sustained. Dissatisfied, the first Defendant appealed to the Court of Appeal and the matter in the High Court stood pending from 2015, awaiting the appellate decision.¹⁰¹ The appeal, finally decided in December, 2023, found that the *locus standi* issue required evidence before the Court could rule on it, as such, the same ought not to have been decided as a PO.¹⁰²

This analysis and juxtaposition do not aim to fault the appealed ruling by the High Court but rather to point out an almost nine-year period, between 18th May, 2015 and 15th December, 2023, in which the *TIB Development Bank Ltd v. Dr. Milcab Kalondu Mrema and Arusha Blooms Limited* case before the High Court was stayed pending the determination of the appeal based on a ruling upholding a *locus standi* preliminary objection which did not meet the requirements of a preliminary objection. This scenario illustrates how the case management system applied in the High Court is without the necessary scrutinization element and tools to guarantee that the raised preliminary objections are worthy of that

¹⁰¹ Original case file records of *TIB Development Bank Ltd v Dr. Milcab Kalondu Mrema & Arusha Blooms Limited*, Land Case No. 70 of 2014, accessed from the Arusha High Court Registry on 25 February 2023.

¹⁰² *Milcab Kalondu Mrema v TIB Development Bank Limited & Another*, Civil Appeal No. 513 of 2020 (CAT) 7 – 8.

noun. In this particular scenario, such a gap in legislation and case law can be asserted to be culpable for the almost nine-year stay period and consequent delay.¹⁰³

4.3 Leniency with Pleadings Amendment

The subject of a litigation or criminal session in the High Court is generally limited to the pleadings or information which commence the action.¹⁰⁴ Departure from the essence or content of the action commencing documents is only allowed where an amendment order of such documents is issued.¹⁰⁵ This legal ability to order the amendment of pleadings or information is rooted in the need to ensure that the real issue in dispute is accurately set forth to be adjudicated.¹⁰⁶ Be that as it may, the legal allowance of amendments at any stage of the proceedings, regardless of its potential benefits, has the effect of reopening the pleading exchange or plea taking and PH step.¹⁰⁷ In theory and in an extreme example, an amendment of the plaint can be granted on the day of judgment just before it is read, potentially forcing the conducted proceedings to be redone. This legal window for amendment can be used both justifiably or as a delay tactic. In either case, the amendment would add to the total time taken to decide the matter.

¹⁰³ Original case file records of *TIB Development Bank Ltd v. Dr. Milcab Kalondu Mrema and Arusha Blooms Limited* (n 101).

¹⁰⁴ CPC (n 24) O. VI r7; *Paulina Samson Ndawanya v Theresia Thomasi Madaba*, Civil Appeal 45 of 2017 (CAT) 13, 23; *Charles Richard Kombe t/a Building v Evarani Mtungi & Others*, Civil Appeal 38 of 2012 (CAT) 9 – 10; *Maveda Mashauri Majenga @ Simon v Republic* (n 10) 2, 3, 6 – 9.

¹⁰⁵ CPC (n 24) O. VI r7; CPA (n 8) s276 (2 & 3).

¹⁰⁶ CPC (n 24) O. VI r17; CPA (n 8) s276 (2); Commercial Division Rules (n 24) r24 (1 & 3).

¹⁰⁷ *Ibid*; Original case file records of *Meet Singh Gurbax Singh v Tanzania Railways Corporation* (n 49).

In the case of *Meet Singh Gurbax Singh v. Tanzania Railways Corporation*, the effect of the amendment of the pleadings at any stage of the case is illustrated. On 04th December, 2018 when the case was called for first PTC, the plaintiff successfully prayed for amendment of the plaint to reflect the change of name of the defendant. On 07th February, 2019 when the case was called, pleadings, which followed the order of amendment, were marked complete, the case was adjourned to 11th March 2019 for first PTC. On 11th March, 2019 and six other times, the matter was adjourned, on account of the assigned Judge's and the plaintiff advocate's absence and for various undisclosed reasons, until 27th August, 2019 when, though called for the conduct of the first PTC, the defendant successfully prayed for amendment of the WSD. The amended WSD was filed on 11th September 2019 and the first PTC was adjourned first to 24th September 2019, and due to the defendant advocate's absence, it was further adjourned to 16th October 2019. First PTC was conducted, speed track II was ordered, mediation was conducted and marked to have failed on 26th November 2019, the final PTC was conducted on 11 February 2020 where hearing was scheduled to be on 25th & 26th March 2020. On the 25th, due to the plaintiff's absence and though the defendant prayed for dismissal, the matter was adjourned to 18th May 2020. On that date, though the plaintiff was also absent due to being unable to travel back from the UK during the COVID-19 pandemic, the defendant successfully prayed to file an amended WSD. The matter was adjourned four times before 07th December 2020 when the second amended WSD was filed and hearing began on 14th December 2020.¹⁰⁸

¹⁰⁸ Original case file records of *Meet Singh Gurbax Singh v Tanzania Railways Corporation* (n 49).

In that case example, though the adjournments were on account of various factors, the amendment of pleadings was one of such factors and a significant one at that. Though the amendment order granted on 04th December 2018 was arguably on a reasonable cause, it was the start of a chain of amendments and adjournments which culminated on 07th December 2020 more than 24 months later and after the lapse of ordered speed track. Admittedly, amendments may be necessary. However, the legal allowance for such amendments has to be framed in such a manner which caters to such necessity but is safeguarded against its deliberate or negligent abuse. While the provision applicable to amendment of pleadings in commercial cases can be argued as being better laid out than those applicable in other civil and criminal cases, the general current legal position on the matter invites the use of discretion which allows its inconsistent application.¹⁰⁹ Again, that position is without objective mechanisms to be used by the Court in determining how many amendments should be allowed in any case or which amendments are necessary and which are superfluous to matter or make a difference. The CPC has been identified specifically as being unable to limit the number of amendments to pleadings a party can apply for.¹¹⁰ Consequently, the legal position affects the Court's ability to control proceedings before it as far as amendment of pleadings are concerned.

¹⁰⁹ CPC (n 24) O. VI r17; CPA (n 8) s276 (2); Commercial Division Rules (n 24) r24 (1, 3 - 5).

¹¹⁰ Wambali FLK – Justice of Appeal and Retired Principal Judge, interview by author (04th May 2023, Kivukoni Road – Ilala CBD, Dar es Salaam); Interview with an Anonymised Judge of the High Court, interview by Pima RA & Matovelo MA (06th April 2023, Kivukoni Road – Ilala CBD, Dar es Salaam).

4.4 Lack of Remedy for Lapsed Timelines

Severally, the law provides for fixed timelines within which specific steps in the case ought to be done. The existence of such timelines and their compliance, shows the law's provision of the scheduling of time and events element of case management system. However, in instances where those timelines are not complied with and the law does not provide for remedies or ways to proceed, following such non-compliance, that gap in the law creates a legal challenge towards the applied case management system's effectiveness. Illustration of this challenge is in the cases which stand pending awaiting mental status result beyond the legislated period of forty-two days.¹¹¹ Though the law stipulates how long such medical examination should take, it does not provide what the Court ought to do, when, after forty-two days, the report is not forthcoming and it remains pending for an inordinately long time. As such, the Court is without basis to compel such a medical report's production or otherwise proceed with the matter, facts which impede the Court's ability to control the proceedings before it.

An example of the challenges posed by the law's silence on the matter can be drawn from the Mbeya High Court registry. In that registry, the cause listed cases for the second criminal session out of the eight to be held in 2024 indicates the non-listing of three cases which have been pending for three years, since 2021, citing awaiting mental medical report as the reason for the cases not being listed.¹¹² In that example, it's not that the cases are not mature to proceed, but that they are pending the filing of the mental

¹¹¹ CPA (n 8) s216 (4) & 220 (2).

¹¹² Deputy Registrar in Charge, 'Criminal Sessions at Mbeya and Rungwe – Age of Cases Cause Listed' (Judiciary of Tanzania, 27 December 2023) 5.

medical report, which the Court has no control over, cannot hasten the process and the accused persons are held in custody.

Furthermore, where the law allows the use of the Court's discretion, its silence on what the Court ought to do, when that discretion is abused or used to the end of prejudicing any party, impedes the efficacy of the applied case management system. While the language of the law suggests that adjournments are not to be encouraged, the allowance to unendingly postpone or adjourn a hearing on account of the unavailability of witnesses causes delay and the fact that the Court is not without mandate to dismiss the case on that account, diminishes the power of the Court to control proceedings before it.¹¹³

5. Conclusion

This article sought to discuss the doctrinal and empirical findings so as to identify legal challenges facing the case management system applied in the High Court, if any, and accordingly illustrate how such challenges negatively affect the applied system. In doing so, it confirmed the existence of two main legal challenges facing the applied system, those being the existence of unsupportive laws to the system's effectiveness and the lack of comprehensive case management system regulations. The unsupportive laws challenge was the leading identified challenge and as a blanket challenge it was further illustrated through the discussion on the insufficiency of the law in providing a robust scrutinization mechanism, fostering discretionary or lengthy timeline for different case events, mandating the conduct of criminal sessions and its perils, allowing

¹¹³ CPA (n 8) s284 (1).

multiple and lengthy adjournments, not limiting preliminary objections, being lenient with pleadings amendment and lacking of remedy for lapsed timelines. The discussion of such ways in which the laws are unsupportive has also shown how such challenges hinder timely justice dispensation in the High Court.

To remedy the challenges and the way they appear in practice, amendment of *inter alia* the referred laws to enhance their facilitation of an effective case management system is recommended. Such a recommendation encompasses both principal and subsidiary legislation. As such, the recommendation is made to the Parliament, the Chief Justice and the Minister for Constitutional and Legal Affairs (the Minister). To this end, it is proposed that the criminal and civil procedural laws used to administer respective cases, which were referred herein, be amended to provide for robust scrutinization of the cases filed before the High Court in form and content as required. Such amendments should, *inter alia*, name an officer responsible with such scrutinization and vests them with the power and duty to reject or return cases which are defective on the face of their commencing documents. It is also proposed that the amendments should provide for commensurate and strict event and timelines to be complied with and should clearly provide for remedies for default in compliance. Further, the amendments should, to the greatest extent possible vest the Court with the power to control the proceedings before it, have the power to curb or sanction abuse of court process, prevent adjournments and ensure compliance with timely Court orders. Finally, amendments are necessary so as to align the position of the law with the business process adopted by the Judiciary through E-CMS.

While amendment of the law can be a remedy to what ails the case management system in the High Court, the promulgation of a set of specialized and comprehensive case management system rules is also recommended following their absence being identified as one of the legal challenges facing the High Court's case management system. As the institutions vested with powers to make procedural regulations, this recommendation is made to the Chief Justice and the Minister using their mandate severally or conjunctively.

To be comprehensive, these rules can be designed to apply to civil or criminal cases individually or to both collectively, addressing every other issue which is not or cannot specifically be covered by the relevant procedural law, incorporate various proven circular directives, provide specific techniques for expedience in the High Court and lay out sanctions for various deliberate actions which cause delay. Inspiration for such rules can be drawn from various jurisdiction with such provisions, rules or guideline of case management system including Canada under rule 77 of the Rules of Civil Procedure of Canada on civil case management, the United Kingdom specifically under rule 3.1 to 3.26 of the Criminal Procedure Rules covering criminal case management, Uganda specifically under rule 9 (3), 12 (4) and 13 of the anti-corruption case management rules on PH, adjournments and timely delivery of judgments, and Kenya specifically under paragraphs 5.0 to 10.0 of the active case management guidelines prescribing duties of the parties, pre-trial case management conference, court case management powers and so much more, to mention a few.