



***J*UDICIARY OF *T*ANZANIA**

***H*IGH COURT OF *T*ANZANIA**

***C*OMMERCIAL *D*IVISION**

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## 1. Introduction

The history will reveal herein down, this court commenced its business in 1999. Since its inception this court has been managed by three Judges at any given time. The first judge in charge was His Lordship Judge Dr. S.J. Bwana and other founder judges were Hon. Judge Nsekela and Hon. Judge Kalegaya. Hon. Judge Nsekela was appointed Justice of Court of Appeal of Tanzania and N.P. Kimaro was appointed to replace him. Later Madam Justice N.P. Kimaro was appointed a Court of Appeal Judge. His Lordship Judge Kalegeya was transferred to High Court Dar es Salaam Zone where he was made the judge in charge before he was appointed a justice of the Court of Appeal.

The first judge in charge was transferred and His Lordship Judge Luanda appointed to take over the captainship of the court. Other judges were Hon. Judge S.A. Massati and Lady Justice Sauda Mjasiri.

All the three judges were later transferred. Hon. Justice Luanda and Madam Justice Mjasiri appointed Justices of Appeal and His Lordship Judge S.A. Massati made the Principle Judge. Justice Massati has since January 2009 been appointed a justice of appeal.

Currently the judge in charge is **Judge Robert V. Makaramba** who took over from Lady **Justice K. K. Oriyo** who was elevated to the Court of Appeal and other judges are Hon. **Judge A. R. Mruma** and **Hon. lady Justice A. E. Bukuku**.

Dr. John Luhangisa, who is now the Registrar of the East Africa Court of Justice, was the first registrar of this Division, followed by Mrs. Teemba and later on Mrs. E.G. Mbise. The current registrar is John R. Kahyoza.

The Registrar is assisted by a Deputy Registrar. The first Deputy Registrar was Mrs. Teemba before she was made a registrar. Mrs. Teemba was made a Labour Commissioner and later appointed a judge. She was followed by Hon. Mruma who is now a judge of the High Court and currently we have Mrs. Katarina Revocati at the main registry, Hon. Ms A. E. M. Teye at Arusha sub –registry and Hon. Ms. E.G. Rujwahuka at Mwanza sub-registry.

## **2. Historical Background of the Commercial Court of Tanzania**

### **2.1. *Establishment of the Court***

The Commercial Court was established under Rule 5A of the High Court Registries (1984) Rules as amended by GN. 141 of 1999 which was later repealed and replaced by GN. 96 of 2005. That Rule states:

***“There shall be a Commercial Division of the High Court within the Registry at Dar es Salaam and at any other Registry or sub registry as may be determined by the Chief Justice in which proceedings concerning Commercial case may be instituted”.***

The High Court of Tanzania Commercial Division is one of the three Divisions of the High Court of Tanzania. It started its operation on 15 September, 1999 following a decade of legal reform process. It is now eleven (11) years old.

The main objective for establishing the Commercial Division was to put in place a specialized Court which would cater for the business community by determining Commercial disputes efficiently and effectively. This was necessary in the prevailing economic situation of liberalization and privatizations. Strengthening of the private sector by encouraging investors both local and foreign.

The other objective for establishing the Court, was a need among the business community as well as inventors, both local and foreign, for a Court that would effectively, efficiently and speedily resolve commercial disputes that were to emerge in the wake of expanded business and commercial activities. The call for the commercial court was a result of the developments in the management of the economy – where privatization became the order of the day.

### **2.2. *Financial and other support to the Court***

Bank of Tanzania and DANIDA were the major supporters of the Court. One cannot commend the Commercial Court’s performance without thanking DANIDA and the Bank of Tanzania for their helping hand. The court does not intend to underrate the contribution of the government but just to emphasize that without the contribution from DANIDA and the Bank of Tanzania, the Commercial Court would not have been in existence as we see it today. The government provided human personnel and finances to run the court ( recurrent budget).

DANIDA assisted to build capacity of the court's staff through training and attachment to experienced commercial courts. DANIDA refurbished the court's permanent office to give the newly born baby the office that was to carry its image. DANIDA provided the court with modern working tools and ensured users are trained.

The Bank of Tanzania (BOT) did a lot to supplement what the DANIDA and the government were doing to assist the court to achieve its objectives. It refurbished the court's temporary premises, procured transport for staff and contributed to build capacity of staff of the court.

### **3. Structure of the Court**

#### ***3.1. The Court's Vision, Mission and Core values***

The court has its Strategic Plan (SP), which clearly states the Vision, Mission and core values of the court. It also provides the objectives of Court, performance indicators and means of evaluation. The Court has been reviewing its Strategic Plan from time to time. The current Strategic Plan of the Court is 2010/11 – 2014/15 which addresses the relevant unfinished business in the strategic plan for 2006/7-2010/11, implements the relevant strategic priorities of the High Court and responds to major strategic issues implied by the evolving external and internal environments of the Court.

##### **3.1.1. Societal Vision**

The vision of the Commercial Court for the Tanzanian society is:

***Timely, Quality and Accessible Justice in Commercial Cases for All***

##### **3.1.2. Institutional Mission**

In line with the Societal Vision, the mission of the Commercial Court is:

**To provide just, quality, efficient, effective and speedy disposal of commercial cases through modern systems and practices.**

##### **3.1.3. Institutional Vision**

The institutional vision or rather, the conceptual image of the Court's success by the end of the five years of the Plan is:

***To be become a dynamic, technology-oriented and professionally competent commercial court - able to handle specialized commercial cases***

**3.1.4. Core Values**

The handling of cases by the Commercial Court shall continuously be underlined by the following set of core values:

- i. Equality (before the law)
- ii. Impartiality
- iii. Independence of decision-making
- iv. Competence and professionalism
- v. Integrity
- vi. Accessibility
- vii. Timeliness
- viii. Certainty and predictability of decisions

To achieve vision of timely Quality and Accessible Justice in Commercial Cases for all, the court has been striving to create a conducive environment for efficient and effective delivery of supportive services. The Court sets targets, which are carried out by a committed staff using what, may be said to be a modern technological system (in relative terms).

**3.2. *Organization structure***

The Court is a Division of High Court of Tanzania having the head quarters at Dar es Salaam and two sub-registries, one at Arusha and another one at Mwanza. Currently, the Court operates from Dar es Salaam. The Sub-registries have no resident judges. Judges conduct one-week session every month at each Sub registries. Each sub registry has a deputy registrar. A deputy registrar supervises the Sub registries by admitting cases and administering both financial and human recourses at the sub registry.

Plans are under way to open registries at Mbeya (Southern Tanzania) and Dodoma (central Tanzania). The organization structure attached to this report will cover it all. The law allows filing of cases at the sub registries of the Commercial Division of High Court at any High Court centre. If commercial case if filed at the ordinary High court centre it can be transferred to the Commercial Division.

### **3.3. Staff**

The Commercial division of the High Court has three judges, a registrar of the Court, three-deputy registrars one at the headquarters and one at each sub registry and 72 support staff of different calibers. The authorized number of judges is four, but given the shortage of judges national wide, the number has remained three from its inception.

### **3.4. Management of Commercial Division of the High court**

The judge in charge, registrar and deputy registrars manages the Division. The Registrar is an accounting officer and chief executive officer of the Division. In additional the Division has permanent Committees, which assist the Court in its operations and sometimes may form ad hoc committees. The following are but some of these Committees:-

#### **3.4.1. Management Committee**

This is an in-house management team consisting of all the judges, the registrars, the chief accountant, chief internal auditor, human recourses officer and the senior registry officer. Its basic duty is to advice “the management” on in-house management issues. The Management team consists of the judge in-charge and the two registrars. These deal with the day-to-day operations of the Court.

#### **3.4.2. Commercial Court User’s Committee:-**

It is a Committee established under G.N No. 141 of 1999 as amended by GN No. 96 of 2005 Rule 5B. The role of the committee is to advise the Court management on matter of Court practice and select assessors. It consists of all judges of the Commercial Court, the Registrar and deputy registrar (as Secretaries); two advocates nominated by the Bar Association; two State Attorney nominated by the Attorney General; and five persons nominated from the business Community. They come from lawfully established business organizations representing the commercial community. This Commercial Court Users’ committee acts as a watchdog. It feeds the management with the views and feelings of “the outside world” about court. At the same time, it informs its members of what is going on that the Court. This Committee is very helpful the Court and its views are highly appreciated by the Management of the Court.

### 3.4.3. Staff General Meeting

This is a meeting which convene once in every month for all the staff members of the Commercial Division to update the staff about Management decisions and receive feedback.

### 3.4.4. The Workers' Council

The workers' council is composed of representatives of employees, trade union leaders and the management. The Division has its workers council meeting and participates in the workers, Council of the entire Judiciary. This body brings together representatives from the entire Judiciary. This body allows employees to take part in the administration of their organization or institution. It is established by law.

## 4. Commercial Division's Operation and Performance

### 4.1. *Jurisdiction*

As already indicated the Commercial Division of the High Court is a Division of High Court of Tanzania which has a duty to adjudicate on Commercial Disputes. The Division operates under the laws governing the High Court of Tanzania with very few exceptions.

The Commercial Division today has both original and appellate jurisdiction<sup>1</sup> as provided by Rule 5A (2) which states:-

***“The Commercial Division of the High Court shall have both original and appellate jurisdiction over cases of Commercial significance”.***

The Commercial Division did not have appellate jurisdiction from its inception as provided under Rule 2 of the High Court Registries Amendment Rules 1994<sup>3</sup>. It was not until 2005 when the court was clothed with appellate jurisdiction, which allows it to hear appeals from subordinate courts i.e. the Resident Magistrates' Court and District Magistrates' courts

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2.1 <sup>1</sup> GN. No. 427/2005

2.2 <sup>3</sup> GN. No. 141/99 amended by GN. NO. 96/2005

#### 4.1.1. What is a commercial dispute?

The rules establishing the Commercial Division, defines a Commercial Case. It is provides the following definition:-

“Commercial Case” means a civil case involving a matter considered to be of Commercial significance, including but not limited to:-

- i. the formation of a business or commercial organization;
- ii. the governance of a business or commercial organization;
- iii. the contractual relationship of a business or commercial organization with other bodies or person outside it;
- iv. the liability of a commercial or business organization or official arising out of its commercial or business activities;
- v. The liabilities of a commercial or business person arising out of that person commercial or business activities;
- vi. The retracting or payment of commercial debts by or to business or commercial organization or person;
- vii. the enforcement of commercial arbitration award;
- viii. the enforcement of awards of a regional court or tribunal of competent jurisdiction made in;
- ix. accordance with a Treaty or Mutual Assistance arrangement; to which the United Republic is a signatory and which forms part of the law of the United Republic;
- x. admiralty proceedings; and
- xi. Arbitration proceedings”.

#### 4.1.2. Pecuniary Jurisdiction

The commercial Division’s pecuniary jurisdiction on cases of Commercial nature is lower than the pecuniary jurisdiction in the other Land Division and General Registry of the High Court.

The pecuniary jurisdiction is Tshs. 30,000,000/= for movable property and Tshs. 50,000,000/= for immovable<sup>5</sup>.

## **4.2. Trial of Cases**

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2.3 <sup>5</sup> See Act No. 25/ 2002 Written Laws (Misc. Amendment) and Act No. 4 / 2004 Written Laws.

Trial of all cases, unless decided otherwise by parties should be by aid of assessors O. XVIII R. 1 A (Civil Procedure Code). Assessors are nominated by the Commercial Court users' committee whose composition is provided by Rule 5B of High Court Registries Rules (cited supra).

Rules provides as follows:-

**Except where both parties agree otherwise, the trial of the suit in the Commercial Division of the High Court shall be with aid of assessors who shall not be less than two and generally knowledgeable of the field concerning the suit, and shall be selected from the list submitted to Commercial Division by the Commercial Users' committee.**

The judges are required to take into account the opinion of the assessors but are not bound by their opinion provided they gives reasons of disagreeing with such opinion.

### **4.3. Court Fee structure**

The Commercial Court has its own unique fee structure. GN. No. 428/2005 which amended GN. No. 275/1999 governs the Court's fees. The GN provides among other things the following scale for determining the filing fees;

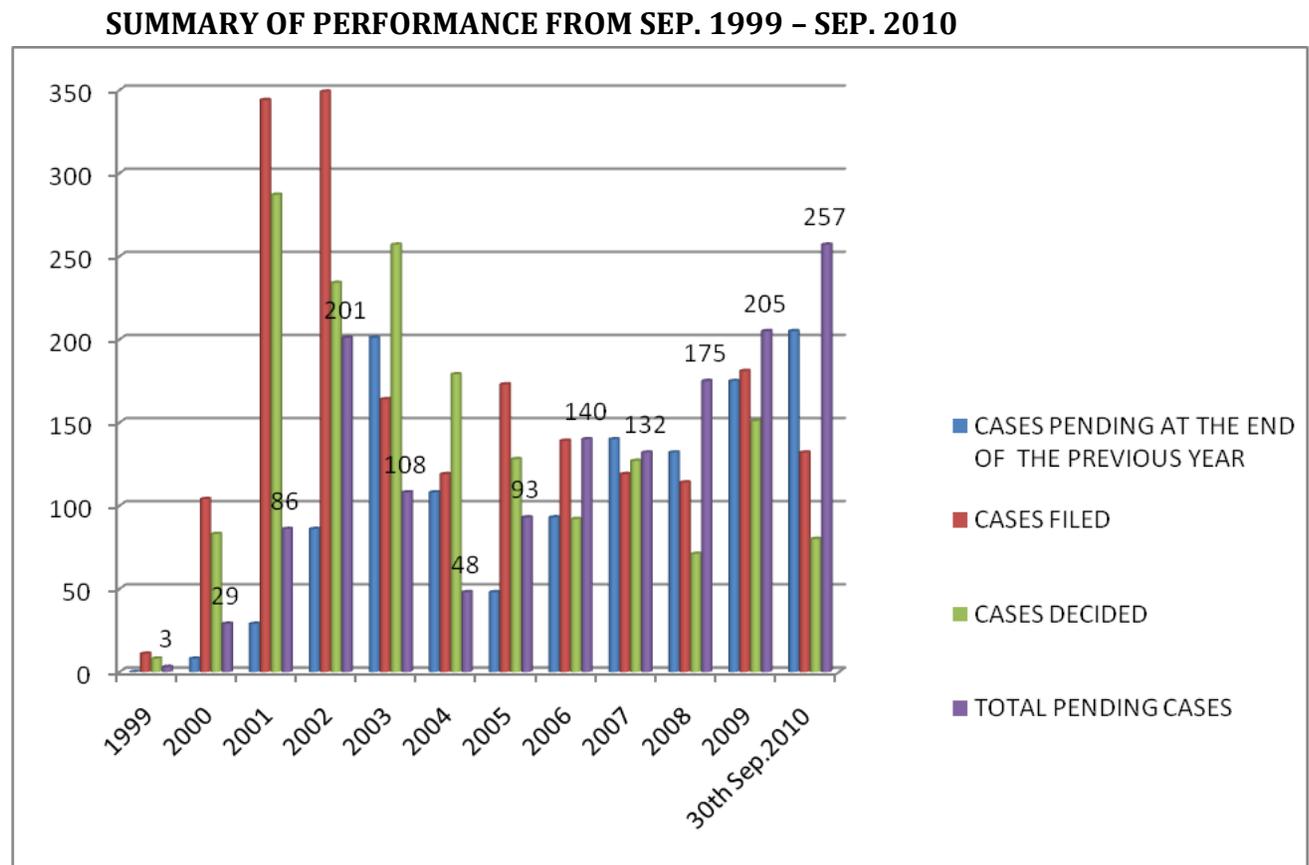
- (a) For every subject matter or another claimed whose value is up to Tanzania shillings two hundred million (Tshs. 200,000,000) three per centum (3%) of the said value shall be payable as court fees;
- (b) Where the value or amount claimed exceeds two hundred million Tshs. 200,000,000/=, then one per centum 1% of that excess shall be payable in addition to the three per centum 3% payable under item (a).

Some of potential litigants are not happy with the fee structure and some of the development partners are not in favour of that fee structure. One has to conduct a study to be able to answer whether such a structure is ideal or not. The founder judge in-charge of Commercial Court used to call it a safety valve. It is safety valve in the sense that it controls a number of cases filed to this court lest the court will be clogged up. The court has plans to review its fee structure. The Court has reports from other sisters Courts where no such safety valve exists, the courts are over burdened by pending cases and do think of imposing restrictive fee structure.

It is this fee structure, which has caused uproar for the establishment of a small claims' Court. There is a discussion going on to establish a small claims' court which will be for small and middle entrepreneurs.

## 5. Summary Performance of the Court

The Court's performance has been good and met the expectations of the stakeholders. The following data speaks for itself:



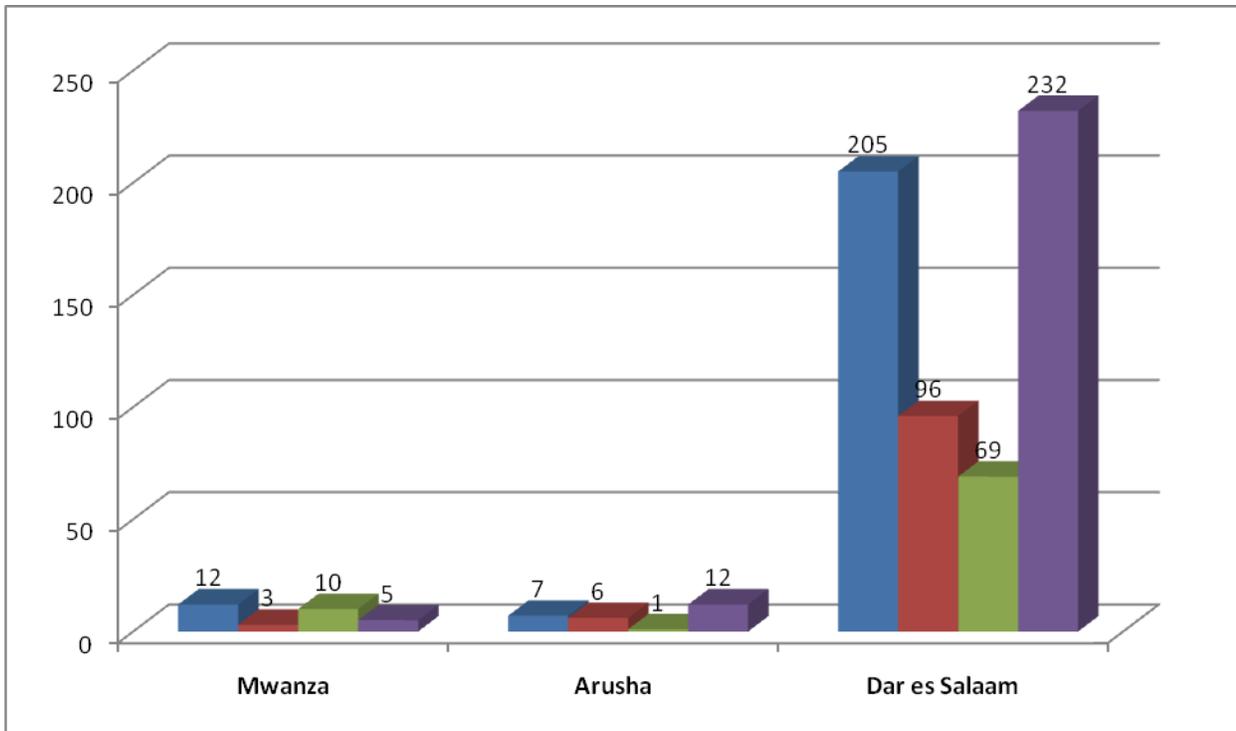
Average time a Case takes (from filing to determination):

- 1999 - 2 months
- 2000 - 3.5 months
- 2001 - 2.86 months
- 2002 - 5.05 months
- 2003 - 8.42 months
- 2004 - 13.26 months
- 2005 - 9.81 months
- 2006 - 7.47 months

2007 - 14.02 months  
 2008 -13.54 months  
 2009 -10.59 months  
 2010 up to September 359 days

By September 2010 a total No. of **1949**, cases have been filed in this Court. Out of that number, **1697** have been disposed of, which is **87 %** of the total number of cases filed. Out of all cases disposed of, about 20% were settled through mediation.

**SUMMARY OF WORK LOAD AND DISPOSAL FOR THE YEAR 2010 UP TO**



**6. Execution of court decrees**

Court decrees are executed by the court brokers. Court brokers are officers of the court. They are appointed under the Judicature and Application of Laws Ordinance (cap.453) and the rules made thereunder. The rules are called Court Broker and Process Servers (Appointment, Remuneration and Discipline). **G.N. 315/97**. Court Brokers are appointed and disciplined by the Disciplinary Committee. The chairperson of the disciplinary

committee is the Chief justice or his representative. The executing officers who are taxing masters determine costs of executing the judgments.

## **7. Use of Information, Communication and Technology**

According to its mission, the Commercial Court aims at providing just, quality, efficient, effective and speedy disposal of commercial cases through modern systems and practices. The Court embraces technology as its shown by its mission.

### **7.1. *ICT Road Map for the Judiciary***

The Court held seminar on “*The Role of Information, Communication and Technology in the Administration of Commercial Justice*” in September 2007. All judges from Tanzania, 18 judges from African countries and 6 judges from outside Africa attended the Seminar. The conference came up with a number of recommendations one of them was to establish an *Information, Communication and Technology (ICT) Road Map* for the Judiciary. Judiciary employed a consultant, who developed an ICT road map after the conference. It is the Courts’ expectation that the ICT Road Map is going to change the way the Judiciary in general and the Commercial Court in particular operates.

### **7.2. *Digital Recording of court proceedings***

The Court has in place Digital Computer Aided Recording and Transcription System. The evidence is recorded by special computers and transcribed so has to enhance judges’ efficiency and relieve them from the tiresome job of recording evidence using long hand. The system is delayed transcription in sense that proceedings are available three to seven days from the day of recording depending on the length of the proceedings. Currently there are plans to modify it by procuring a new system, which will allow real time transcription. This new system will involve training of real time stenographers. This will take time, as discussions are still underway with the potential financial supporters.

### **7.3. *Website***

The court has a website [www.comcourt.go.tz](http://www.comcourt.go.tz). The website provides access to cause list, case status and case trend. There is no need of an advocate coming to Commercial Court for a cause list. It provides for information on the display boards and online discussion. The display board gives information as to what is going on in courts at that particular time. Parties can tell what has happened to their cases on that day by visiting the website. There rules applicable to the Court and other information.

#### **7.4. Case Management System**

The Court has an electronic Case management system. The system or say a software enables the court to prepare electronic cause list, print and returns. It is expected that in few months from now, the system will further be developed and more features added to enable it to print orders like summons and other notices. Enable electronic assignment of cases and sending of warning to judges on pending judgments, which are almost over- due and such like things. The court has introduced a mobile application system, which allows parties and their advocate to get information regarding their cases using mobile phones. This application will be launched before the end of this year.

#### **7.5. E- Library**

The court recognizes the importance of research in discharging the work of judicial officers. It has contracted a consultant to develop an electronic library. When complete, a month from now the court's library will be available on the Court's website. Judges will be able to use the library materials from their home place. This will enhance judges' efficiency.

### **8. Capacity Building**

The Commercial Court is committed to build the capacity of its staff at all level through training and study tours. The Court has training programmes, which has taken on board training needs of its staff. The Courts biggest challenge is how to get funds to implement its programme. The Court sets funds for training in its budget. That amount is not sufficient, so it expects support from development partners and other sources.

The Court intends to be a user friend court, this can be achieved through training to change staff's attitude.

### **9. Budgeting**

The Court has its own vote since 2002. It prepares its own budget. Its financial independence has not saved it from the normal shortage of funds. The budget allocated to the court is not enough to cover all the targeted activities. The Court enjoys support from development partners to supplement its budget allocation.

### **10. Conclusion**

The court's Performance is satisfactory. There is a need to struggle to maintain the standard while endeavoring to ensure better performance than it is.

**JOHN R. KAHYOZA**  
**REGISTRAR HIGH COURT OF TANZANIA COMMERCIAL DIVISION**

**Annex 1**

**THE PROPOSED ORGANISATION STRUCTURE OF THE COMMERCIAL DIVISION OF THE HIGH COURT**

