THE TANGANYIKA LAW SOCIETY

ANNUAL CONFERENCE AND GENERAL MEETING (AGM)

17TH – 18TH FEBRUARY, 2012

ARUSHA INTERNATIONAL CONFERENCE CENTRE, ARUSHA

"*Breaking the Mould; Addressing the Practical and Legal Challenges of Justice Delivery in Tanzania*"

The Practical and Legal Challenges of Justice Delivery in Tanzania: Experience from the Bench

By Hon. Mr. Justice Robert V. Makaramba

A Paper to be presented at the Annual Conference and General Meeting (AGM) of the Tanganyika Law Society to be held at the Arusha International Conference Centre, Arusha, Tanzania, from the 17th – 18th February, 2012

The Practical and Legal Challenges of Justice Delivery in Tanzania: *Experience from the Bench*

By Hon. Mr. Justice Robert V. Makaramba[1]

1.0 Introduction

I feel honoured and much humbled having been invited to attend this Conference and being asked by its organizers to share with you my thoughts on the "*Practical and Legal Challenges of Justice Delivery in Tanzania: Experience from the Bench*." This, I am going to do in the context of the Commercial Division of the High Court of Tanzania.

I brought myself to put my thoughts in this Paper which comes in four main parts. In Part one I have done the Introduction. In Part Two I examine albeit very generally, the practical and legal challenges of justice delivery in Tanzania Mainland so as to set pace and tone for Part Three where I situate the discussion drawing on my experience from the Commercial Division of the High Court, where I currently sit. In Part Four I make a brief conclusion with some recommendations.

2.0 THE PRACTICAL AND LEGAL CHALLENGES FOR DELIVERY OF JUSTICE IN TANZANIA MAINLAND

2.1 The Justice Delivery Institutions in East Africa: A Brief Overview

The institutions for delivery of justice in the three of the five East African Community (EAC) countries are "molded" from the same "mould"- the common law adversarial system of litigation. This system was imposed by the British colonial government on the Kenya "*colony*", the Uganda "*Protectorate*" and the Tanganyika "*Mandated Territory*." After their respective independencies, these three countries inherited this system.

The central theme of this Conference which is "***Breaking the Mould; Addressing the Practical and Legal Challenges of Justice Delivery in Tanzania***," in my view, carries a

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strong and hidden message that we should think seriously and craft ways of "***breaking the mould***" of the inherited common law adversarial system in vogue. The bigger question however is ***what must the courts do to adjust to the changing realities of an increasingly complex world*?** I hope that the participants at this Conference will be able to engage and come up with some practical recommendations for meeting the many challenges our judiciaries face in this changing and complex world.

In the following sections, I explore some of the practical and legal challenges of justice delivery in Tanzania. My discussion however will be constitutionally limited to Tanzania Mainland only. It will not touch on Tanzania Zanzibar, the other constituent entity of the "Union." This is reasons of the constitutional dispensation of the "*united sovereign state*" of Tanzania, a "union" characterized by dualism in the three branches, the executive, legislature and the judicature, with Tanzania Zanzibar having not only its own Constitution, but also a "Revolutionary Government and President", "House of Representative and Speaker" and a separate and distinct justice and judicial system, with its own "Chief Justice", system of laws and courts.[2]

2.2 Practical and Legal Challenges of Justice Delivery System in Tanzania

In this section we examine the policy, legislative, institutional, structural, and behavioural or attitudinal challenges for justice delivery in Tanzania Mainland.

2.2.1 Policy Challenges

In terms of general government policy formulation and directions with respect to the judiciary, the Judiciary of Tanzania (JOT) falls under the portfolio of the Ministry responsible for Constitutional and Legal Affairs. This governance structure runs the risk of undermining the Judiciary as the "Third Branch" of Government, which makes it an

[2] This arrangement is stipulated in various provisions of the 1977 Constitution of the United Republic of Tanzania as amended from time to time and the Constitution of Zanzibar of 1984 as amended.

"un-coequal branch" with the other two branches, the Executive and the Legislature. Consequently, policy matters for and budget of the Judiciary are considered alongside those of Ministries, Departments and Agencies (MDAs) without paying any special attention to the special needs of the Judiciary.

The Ministry holding the portfolio of the Judiciary all along has been spearheading legal and judicial reforms and making critical decisions concerning judicial reforms without the adequate participation by and of the top Judiciary leadership, thus creating problem of ownership of the reform programmes and projects aimed at benefitting the Judiciary. Consequently, the Judiciary always bears the brunt of blame for failing to implement reform programs and projects.

The Chief Justice, who constitutionally is the head of the Judiciary, does not have a direct consultative link with the Minister responsible for legal and judicial matters when it comes to making policy decisions concerning the Judiciary. There is no Department at the Ministry specifically for dealing with judicial services, which could liaise with the Judicial Service Commission, which is under the Chairmanship of the Chief Justice in handling policy decisions and administrative matters pertaining to judicial/court management. There is clearly a need for independent judicial administration of the courts in terms of three stages: consultation, decision-sharing, and independence.

2.2.2 Legislative Challenges

The Ministry holding the portfolio of the Judiciary often times prepares and tables legislative changes and new legislation affecting the judiciary with minimal or sometimes no participation by or of the judiciary stakeholders and the leadership of the judiciary.

The Chief Justice is mandated under a number of legislations to make practice and procedural rules with regard to the operation of courts, but which have to be submitted to the Minister for promulgation. Sometimes this contributes to delays in having such regulations in time. Furthermore, the Chief Justice is mandated to issue "Practice Directions." However, these largely are termed "confidential" although they affect court users who are not made aware of the effects of these Directions.

The administration of justice is still hampered by a number of archaic and obsolete laws and rules whose review falls under the various parent ministries responsible for those laws. These line ministries have not been that prompt in talking appropriate action to bring up recommendations for review or amendment or repeal of such laws. This is hampered by lack of political will on the part of the Government and some conflicting interests of some sections in our society to implement legislative proposals by the Law Reform Commission of Tanzania particularly in the area of marriage, inheritance and succession to property upon death.

2.2.3 Institutional Challenges

i) Internal

The governance structure of the Judiciary of Tanzania despite recent changes is still problematic with respect to court or judicial management or administration, which has greatly contributed to accountability problems in the delivery of judicial services. With the establishment of a new cadre of Chief Court Administrator, this may add to the challenge, as currently there are no court managers/administrators.

The Judiciary of Tanzania has yet to embrace Case Management as a technique for addressing the ever growing caseload which contributes to case delays and consequently to delay in dispensation of justice.

Although the Judiciary of Tanzania has already conducted a Training Needs Assessment (TNA), there is as yet not in place a Judicial Education and Training Policy and Strategy to guide implementation of sustainable continuing training and education programmes for judicial and non judicial officers. Lack of continuing judicial education and training contributes to poor knowledge among judicial officers particularly in new and emerging areas of the law thus affecting their competency ultimately lowering their efficiency which impact on the quality of judicial services.

The Judiciary has embarked on a process of drafting a Communications and Education Policy and Strategy, which is not yet completed thus contributing to lack of communication plan and strategy in getting messages out internally and externally.

The Judiciary has adopted an ICT Roadmap but it is yet to put in place an ICT Policy and Strategy. In any event, the existing Judiciary ICT Roadmap which proposed a phased implementation of ICT in the Judiciary has yet to be embraced fully and implemented. Consequently, the use of ICT in the administration of justice has been largely ad hoc with some pockets of success but without overall rolling over. The use of ICT would contribute greatly to more transparency and accountability in delivery of justice thus bolstering public trust and confidence in the Judiciary.

The Judiciary has for sometimes now been running its own Institute for Judicial Administration located at Lushoto, Tanga. However, the Institute has yet to deliver fully on court administration and administration of justice and on continuing judicial education.

ii) <u>External</u>

Frequent financial doldrums have dogged the Judiciary perennially thus greatly impacting on delivery of justice. Much as the Judiciary prepares its own annual budget and submits it to the parent Ministry, budgetary ceilings are set by the Ministry of Finance without taking into considering the special needs and requirements of the Judiciary thus contributing always to the problem of courts not being adequately funded thus making them fail to tackle the ever growing problem of caseload.

As a separate branch of government, courts have the duty to protect citizens' constitutional rights, to provide procedural due process, and to preserve the rule of law. Courts are a cornerstone of our society and provide a core function of government—adjudication of legal disputes. While the judiciary is a separate branch of government, it cannot function completely independently. The judiciary depends upon Parliament (an elected legislative body) to determine its level of funding.

The recent adoption of the Administration of Judiciary Act which has established a special Judiciary Fund, has yet to alleviate the problem of lack of funds due to lack of specified quota by percentage of the annual government budget allocation to the Judiciary Fund, which is still subject to the ceilings set by Government. In any event, the

little monies that are allocated annually to the Judiciary are not disbursed in good time, and even when eventually made available they are not fully disbursed by the Treasury. The normal government excuse has always been that the "National Cake" is not that big and therefore we must all reasonably share it with other government institutions.

The Judiciary of Tanzania continues to suffer from an ever growing caseload. Although there are many contributing factors to this problem, lack of sufficient funds and inadequate number of judges and magistrates take a bigger share of the blame. The problem of case delay is compounded further by the fact that the Judiciary does not exercise control over the appointment of Judges, which is normally done by the President in consultation with the Chief Justice and upon recommendations of the Judicial Service Commission. The Judiciary does not even exercise control over the number of judges the President has to appoint. This also holds true also of the appointment of Magistrates, which although done by the Judiciary, their emolument is controlled centrally by the Public Service Department in the President's Office, which also approves the annual staff posts and estimates.

Ethical conduct and the morale of line staff in the Judiciary contribute greatly to the quality of justice. The very fact that although line staff are hired by and paid through the Judiciary, these staff owe their loyalty elsewhere – that is, outside the Judiciary, with their respective parent ministries and departments. This contributes to failure by the Judiciary to exercise direct disciplinary authority over the line staff. Surprisingly, for example, while the Judicial Service Commission may discipline a magistrate, it cannot do so to his or her driver!

2.2.4 Structural Challenges

- **The nature of our judicial system**

The inherited common law adversarial system with its attendant English practice and procedure has always been at the centre of public criticism for contributing to delays in the dispensation of justice together with its attendant procedural technicalities and

litigation costs. The need for control by judges of the litigation process cannot therefore be overemphasized.

- **High cost of litigation**

The costs of litigation are both in terms of "high" litigation fees charged by private practitioners and the time lost when a litigant is following up on his or her case in court. It is interesting to note that in terms of the new Constitution of Kenya, 2010, the state has an obligation to ensure access to justice for all persons and that fees must be "*reasonable*" and should not impeded justice.[3] Furthermore, the same Constitution obliges the State to avail to an accused person the services of an advocate at state expense "*if substantial injustice would otherwise result.*"[4]

- **The language of courts and laws**

In our superior courts, the Court of Appeal and the High Court, English is still the official language of record. The majority of our laws are also available in the English language, in a country whose official language is Kiswahili which is spoken in Parliament which passes such laws and which is spoken and understood by the majority of our people.

The language of the law traces its origins in the Norman Conquest of 1066. Following this conquest, Norman French became the tongue of the new rulers. Eventually it also became the language of the courts as well, Norman Law French. In 1731, the UK Parliament enacted a statute providing that all court documents "***shall be in the English***

[3] Article 48: *"The State shall ensure access to justice for all persons and, if any fee is required, it shall be reasonable and shall not impede access to justice."*

[4] Article 50(2)(h) that: *"(2) Every accused person has the right to a fair trial, which includes the right—(h) to have an advocate assigned to the accused person by the State and at State expense, if substantial injustice would otherwise result, and to be informed of this right promptly;"*

tongue only, and not Latin or French." [English Act, 1731, 4 Geo. II Ch. 26.][5] It is no accident therefore that to this date that law is filled with terms of art that express technical and specialized meanings, a large portion of which have survived from Norman Law French. For example, *fee simple absolute*, *fee simple conditional*, *fee simple defeasible*, *fee tail, which* appear in the French word order, noun first, modifiers afterward. Lawyers are still fond of "***talking in tongues***" and this long after the dust of the Norman Conquest has settled!

- **Lack of adequate legal representation**

In Tanzania, as is the case for many countries particularly in the developing world, legal representation particularly for indigent litigants is not a widely applicable phenomena due to a small number of practicing lawyers, the majority of whom are urban-based. Furthermore, where Legal Aid is available is only for certain specified criminal matters and in certain civil disputes. Furthermore, Legal Aid providers apart from their small number, they are largely urban-based. Although the Government established a Department to provide policy direction and coordinate the provision of Legal Aid, there is as yet no fully funded National Legal Aid Scheme or Fund.

- **The unrepresented litigants (*pro se* litigants)**

Our courts, perhaps with the exception of the primary courts, where advocates are statutorily barred from appearing, are largely lawyer dependent especially in civil matters. The traditional common law view of the adjudication process is that judges should play only a passive not an active role in the process of dispute processing. This means that it is the lawyers not the judges who have control over the dispute resolution process for

[5] Pollock & Maitland, ***The History of English Law Before the Time of Edward I*** 79, 2nd ed. 1899 and Harry W. Jones, Our Uncommon Law, 42 ***Tenn. L. Rev.*** 443, 450 (1975)

reasons that active engagement by a judge in the progress of a case would compromise the disinterested independence, neutrality or impartiality of the judge.

- **Dilapidated courthouses**

Constitutionally, dispensation of justice is governed by the principle of "*fair, public hearing by an impartial and independent court or tribunal*." This suggests among other things that there has be a courthouse in the sense of a physical structure specifically designed for purpose of providing a place where justice can be delivered and where the public can have unhindered access to facilitate the enjoyment of their constitutional right of "*fair and public hearing*." Unfortunately, the majority our court houses are fairly old and dilapidated. This has created an unfavourable working environment thus impacting on the quality of justice delivered in our courts.

Our judges and magistrates are required to officiate in inadequate surroundings or 'bargain' for adequate facilities and supplies the system suffers. This may affect the independence of the judiciary because one way to safeguard it is to provide adequate administrative arrangements for Tanzania judges, magistrates and courts, thereby reducing the involvement of the government, and in particular the executive, in the operation of the courts.

- **Geographical location of courthouses**

Our justice delivery system is still largely urban based. This makes access to justice for the majority of our people, almost 80% of whom live in rural areas considerably problematic. Furthermore, in some areas, there are no court houses thus forcing litigants to travel long distances in search for justice. This problem is compounded further with lack of adequate funds for judicial development activities particularly in constructing new court houses and maintaining existing ones.

2.2.5 Behavioural or Attitudinal Challenges

- **Personal attitude of judicial officers**

The behaviour or attitude of judges, magistrates and lawyers, who are the most visible participants in the court process, account also for the quality of justice to be delivered. Access to justice is not only in terms of procedures and court houses but also the personal attitude of a judge, magistrate or lawyer. The culture and norms among judges, magistrates and lawyers therefore prevail in the justice delivery system.

- **Lack of court managers**

Most judicial officers have little or no interest in the management of courts beyond managing their own individual courtrooms and cases. Some judicial officers may also be inclined to divorce leadership from management, based on reasoning that ***administration of justice*** (exercise of judging power) is the court system's first concern (with judges leading), while ***court management*** (court/judicial administration) is a secondary consideration (with court administrators managing).

- **Leadership style**

The fact that courts and the legal process are dominated by judges as high-status professionals means that the way that judges use their status and prestige has significant bearing on how courts are led and managed. This can be problematic in courts where judges see non-judge court employees as "second-class citizens" for whom a top-down leadership style is most desirable. This usually leads to failure by court personnel to take any risks, and to "*authoritarianism of the worst sort, under which personal style overwhelms institutional infrastructures, and rational management principles are drowned in the ego needs of judges."*

The complicated nature and dynamics of the courts coalesce in such a way that gaining and retaining exemplary court leaders and managers is a constant challenge. To further complicate matters, the courts have not thoroughly considered the impact of the

"baby boomers" retiring. With the retirement of the boomers in the next few years, much of the institutional memory of the courts as well as decades of experience will be lost. The resulting brain drain could be devastating to the courts.

- **Clash of cultures and courthouse morale**

Tough budgetary times mean lower morale at the courthouse. What can judges do to improve staff morale and, thus, the administration of justice? There has been a suggestion that there is a clash of cultures in a courthouse—the **professional culture** (judges) and the **organizational culture** (everyone else). But when it comes to analysis of courthouse morale, there may be a **troika of entities** to consider: judges; court administration, such people who join national and local associations or may have professional degrees in court administration; and line workers, who perform many tasks not even peculiar to the judiciary. Line workers perform data entry, staff/court users checking at the courthouse entrance, and perform a myriad of other essential tasks. But the role they play is not particularly glamorous, and line workers may not even be aware that what they do contributes to the court's mission to dispense justice.

All three parts of the "*courthouse troika*" (judges, senior court administration, and line staff) feel like they are being asked to do more for less—not just in terms of salary, but also in terms of the psychic compensation or a positive work environment that is essential for motivating the best in all of us.

- **Lack of professional court administrators**

Traditionally, the task of managing courts has been the responsibility of judges-in-charge and/or registrars/magistrate-in-charge or clerks of court. The involvement of a third group—professional court administrators—is a more recent development in our region. In Tanzania as is the case with Kenya and Uganda, until very recently, registrars were the traditional managers/administrators of court operations. They are responsible for overseeing most day-to-day court operations. Trial judges however, have lacked

interest and training in management, so that registrars have handled court recordkeeping, supervision of court personnel, and most other day-to-day routine matters in courts. They also have had responsibilities relating to general government as well as their court responsibilities

- **Lack of legally binding Judicial Code of Conduct and Ethics**

In a professional bureaucracy like a court, the professionals operate in keeping with the standards of their professional members, e.g., judicial conduct and code of ethics, while "bureaucrats" operate in part in compliance with standards and guidelines that originate in institutions outside the organization, and in our case the public service code of conduct established by the Public Service Commission in the President's Office. The Judicial Conduct and Code of Ethics is merely a guideline for judicial conduct and ethics without any legal binding authority.

3.0 EXPERIENCE FROM THE COMMERCIAL COURT AND BEST PRACTICES

In this part I will share my experience from the Commercial Court in addressing some of the practical and legal challenges of justice delivery. I will also take this opportunity to explain some related concepts in court or judicial administration and case management and court management.

3.1 Court Administration and Management

Simply stated judicial administration, also referred to as court administration is the practices, procedures, and offices that deal with the management of the administrative systems of the courts. Judicial administration is concerned with the day-to-day and long-range activities of the court system. In the United States of America where judicial administration has become a profession, every court has some form of administrative

structure that seeks to enhance the work of judges and to provide services to attorneys and citizens who use the judicial system.

Court management means the administration of the courts, that is, the 'administrative activity that creates and maintains the resources and personnel required for arriving at court judgments and rulings.' The former President of the Cantonal Supreme Court of the Canton of Zurich (Switzerland), Rainer Klopfer, described the importance of court management as follows:

> *'A court, as a major institution providing services, and as the most important supervisory body, needs a professional, efficient administration. This does not happen without management, but this in no way means that the independence of judges is compromised, just the opposite. It produces better working conditions for the judges and means that they can better fulfill their core duty, namely to adjudicate."*[6]

Administratively, the Commercial Court, which is more than ten years old, has its main registry at Dar es Salaam, and operates two upcountry sub-registries, one in Arusha in Northern Tanzania and another in Mwanza in the Lake Zone, with two other planned registries in Dodoma in Central Tanzania and Mbeya in the Southern Highlands respectively.

The Commercial Court has in place a Management Committee comprising of the Judges of the court, the Registrars and heads of Departments, which sits monthly to review and advice on management issues. It holds quarterly Staff Meetings, which bring together all the staff, judicial and non-judicial, of the court, to discuss general welfare issues and planned court activities.

The Commercial Court also has in place a statutory Court Users' Committee, comprised of the Judges of the Court, representatives from the Bar, AGC and business community. Its main function is to provide in input on improvement of delivery of court

[6] R. Klopfer, Neue Zürcher Zeitung, 20 June 2005, p. 35.

services to its users. It also conducts Annual Stakeholders Roundtable Meeting for self assessment and recommend list of names to serve as assessors.

Since December, 2011, the Commercial Court has established an Ad hoc Bench-Bar Meeting, where lawyers practicing in the Court meet with court management to deliberate on case backlog reduction strategies.

The Court also has put in place its own Five Year Strategic Plan, which was developed through stakeholder participation and which takes into account the National annual Government MTEF Guidelines. The Court has in place a Staff motivation and development programme.

3.2 Case Management and Caseflow Management

Not to be confused with case management, caseload management is focusing on the workload per case, while case management additionally also focuses on other elements like caseflow. Caseflow management refers to the co-ordination of the court's entire system towards the goal of timely disposition of the matters entrusted to the court - it deals with the timely flow of matters through the court. Case management is an element of caseflow management and refers to the management of an individual case.[7] Trial management, a term also often used, refers to the management of a trial by the setting and observance of certain ground rules.

Leadership is fundamental to the success of a caseflow management program. The leader in an effort to improve caseflow management is one who must motivate others to invest themselves in the program. A leader might do this by (1) articulating a vision of how changes will improve the system, (2) showing how individual persons will benefit from them, and (3) showing ongoing commitment to the effective operation of the proposed program through dissemination of information on program progress and

[7] Ref: "Research on the caseload management of courts: methodological questions" by Andreas Lienhard & Daniel Kettiger, Utrecht Law Review Volume 7, Issue 1 (January) 2011 URN:NBN:NL:UI:10-1-101161 www.utrechtlawreview.org

rewards to those who help the program achieve its goals. Finally, the advocate of the new program has to exercise leadership by building consensus and organizational support for it among the members of the court community who are essential to the program's success.

The significance of leadership as a critical foundation for caseflow management success is reinforced by its recognized importance in the more generic management literature. It is a central theme in effective overall court management. It has been a necessary feature of efforts to transform government generally to deliver more public service in cost-effective ways. And it has been consistently identified as a critical component of successful innovations in the private sector.

3.2.1 Caseload management as an instrument of allocation

1. <u>Allocation of judicial resources</u>

When discussing the allocation of judicial resources, one of the main questions concerns the number of judges, quasi-judicial officers, and court support staff which a court needs to serve the public.[8] A clear measure of the court workload is central in determining how many judicial officers (judges, judicial assistants and clerks) are needed to resolve all the cases coming before the court. Weighted caseload systems are the most common and perhaps the best method used by court management systems to assess the judicial workload and resource requirements.[9]

A weighted caseload system is used to transform the court caseload into the workload of the judicial officials. Cases vary in complexity, and different types of cases require different amounts of time and attention from judges and court support staff. Raw case counts offer little help in distributing the workload equitably among judges, quasi-

[8] V.E. Flango et al., Assessing the Need for Judges and Court Support Staff, National Center for State Courts (NCSC) , 1996, p. 14.

[9] St. Stenz, 'Improving Weighted Caseload Studies in Limited Jurisdiction Courts', 1988-1989 *The Justice System Journal* 13, no. 3 , p. 379.

judicial staff, and court support staff. Merely adding up the total number of cases filed is not a good indicator of the amount of time it will take to dispose of that caseload. In the absence of explicit case weighting, all cases are counted equally, i.e. given a weighting of one unit. Focusing on case numbers without assessing the differences in workload means that one uncontested traffic case is equivalent to one contested case of intellectual property rights, although it is well known that some types of cases are more burdensome than others. As un-weighted cases are not directly tied to workload, they offer only minimal guidance for estimating the need for judges and court support staff. Therefore, an estimate of the amount of work/time needed is a precondition for appraising the resources needed.

Workload in this context means the amount of a particular type of work which a qualified person can handle within a determined time. Important factors that influence the workload are the type of case (the matter being judged), the type of procedure and the organizational framework. Judicial officials cannot devote their entire working day to case-related matters. Therefore weighted caseload systems also need to know the time spent on non-case-related activities. Four main forms of non-case-related activity can be distinguished: general (non-case-related) court administration; Judicial education and training; community activities and public outreach; and private matters.

When measuring the workload or caseload of judicial officials, there is no need to measure the non-case-related working time in different categories. From the point of view of court management, knowing how much time is spent on different categories of non-case-related working time is more interesting in the context of measuring court overheads than in the context of caseload management.

2. <u>Allocation of cases</u>

Another purpose of caseload management is the allocation of cases within the courts, to chambers or judges. It goes without saying that not all cases generate the same amount of work. In order to provide for proper case assignment and the allocation of the required

resources on a reliable basis, it is necessary to have some idea of the staff resources, and especially of their working hours, that a case in any legal field (or case category) requires on average. A good climate in the court can thereby also be maintained and the presence of 'legal harmony' between the court divisions can be guaranteed. Caseload management is thus closely connected with controlling; it may also be a component of an integrated controlling system.

The main or core business of the court is adjudication. In this regard the Commercial Court has done the following toward case management and caseflow management:

- It has developed and adopted a partial case management system and has set time standards for disposal of cases, which are frequently monitored, with case disposal reports issued on a monthly and annual basis.

- It has adopted specific time frames for events thus making case processing more certain and predictable thus serving the time litigants and advocates have to spend at the Court waiting for their cases to be called.

- It has adopted a general policy and made a rule of discouraging adjournments by imposing penalty for unjustified adjournments.

- It has recognized the benefit of utilizing mediation and pre-trial settlement as an alternative to litigation, with 20% of its cases being disposed of at pre-trial stage through mediation.

- The statutory Court User's Committee in place which is comprised of various stakeholders assesses the performance of the Court and advices the Court Management on appropriate steps to take towards improving court services to court users thus contributing to delivery of quality and timely court services.

- Its Rules of Procedure and the Court Fee structure are currently under review with a view to increase access to and timely commercial justice.

- It has recognized the benefits of application of Information Communications Technologies (ICTs) in the administration of commercial justice by doing the following.
    - Having its proceedings are digitally recorded and transcribed
    - Developed a partial case management system with cause listing and data retrieval capability
    - Internet services are available, with its own website http://www.comcourt.go.tz with web based services
    - Short Message Service (SMS) is available through Vodacom and Airtel mobile service providers, for easing communication whereby court users can track their cases by sending an SMS.
    - An online e-Library where judgments and rulings of the court are posted and are available to judges, legal practitioners and the general public free of charge.
    - In order to ease availability of legal information, the Commercial Court also publishes its own Commercial Cases Manual (case reporting) which is available at a minimal cost.

- The Commercial Court operates a fee retention scheme following deal struck with the Treasury whereby a percentage (currently 42%) of the filing fees collected are retained by the Court for improving its court services.

- The Commercial Court maintains an exchange programme with the Malawi Commercial Court where judges from the two jurisdictions spend some time learning from and sharing experience in the administration of justice. It is worthy to note also that the countries of Ghana, Uganda, Rwanda, Malawi and Zanzibar at one time or

another have come to learn from the experience and best practices of Commercial Court of Tanzania in commercial court management and practice.

- The Commercial Court has in place a training policy and a training programme and Plan for its judges and non-judicial staff as a way of imparting new knowledge and improving their skills thus contributing to efficiency and delivery of quality services.

4.0 RECOMMENDATIONS/PROPOSALS AND CONCLUSION

4.1 Recommendations

- It is proposed that a National Legal Information Institute (a kind of a Tanzania Legal Information Institute **TanLII)** be established as a non-profit organization being a collaborative initiative of School of Law of the UDSM, the Law School of Tanzania, the National Bar Association of Tanzania Mainland (TLS) and Zanzibar (ZLS) as a hub of free access for legal information. The Tanganyika Law Society could serve as a Secretariat for this initiative.

- The Judiciary of Tanzania should consider creating a National Law Reporting Board for e-legal resources with a broader stakeholder participation including but not limited to representatives from the Bench, the Bar, the AGC, and others, with Secretariat supported by the Judiciary.

- The Judiciary of Tanzania should consider very seriously revival of the Bar-Bench Committees in every High Court centre to address the problem of caseflow management (See CJ Circular of 2000 on Caseflow Management).

- The Judiciary of Tanzania should develop and adopt its own ICT Policy drawing on the JOT Roadmap (2007) and fast-track ICT by joining the e-Government initiative in order to benefit from the National Fiber Optic so as to provide more reliable and

manageable and less costly Internet services in order to expedite the delivery of quality, accessible and timely justice for all.

- The Judiciary of Tanzania should develop and roll out on a Pilot basis its own Court Case Management System (CCMS) for all types of cases, civil and criminal, and for all courts.

- The Judiciary of Tanzania should think seriously and develop and adopt court performance standards.

- The Judiciary of Tanzania should now embrace fully case management techniques drawing on and learning from the experience of other countries which have benefitted from such approach including USA neighbouring Botswana, a SADC Member State.

- The Judiciary of Tanzania should also work on and adopt some of the proposals the Senior Technical Advisor Mr. Kassady made in his Report (2011) on case management and Registry re-organization at the Dar es Salaam High Court Zone.

- The Judiciary of Tanzania should strengthen its Institute of Judicial Administration at Lushoto by establishing a Faculty of experts to develop and offer continuing judicial education and training programmes for judicial officers and conduct orientation for newly recruited judicial members as well as other professional courses related to court administration and case management.

- The Judiciary should expedite the much awaited Civil Justice Reforms as well as overhauling the Civil Procedure Code, and promulgate new Rules of Procedure taking hue from other jurisdictions which have done so.

4.2 Conclusion

The symbol of justice is that of a blindfolded lady holding weighing scales. This symbolic gesture speaks mountain of the daily acts of judges - that of balancing between various competing interests and to render justice impartially and fairly. The distinction between "law and justice" however has always been elusive tasking the brains of philosophers and jurists equally. It is not within the scope of this Paper however, to explore the breadth and length of the concept of justice and law. Suffice to point out that a "c***ourt of law***" is a space where justice is dispensed based on rule of law.

A large part of the problem of case delays in our courts, aside from the challenges I have outlined in this Paper, is largely attributable to the nature of our inherited common law adversarial system. This system enjoins judges to act as umpires with little or no interference whatsoever with the conduct of the proceedings. This however, might not explain the reality when a judge is faced with an unrepresented litigant (pro se litigant). In such situation a judge finds himself or herself having to serve a dual role of umpire and "pro se advocate" by assuming a sort of an "inquisitorial role", but without compromising his or her judicial independence and impartiality.

There is now a general call for our judges to have more control over the dispute processing. This call, traces its origins in the USA, and has come to be known as "*case management*." It is critical that if we are serious about bringing any tangible changes in the way our courts manage their ever growing caseload, and how lawyers behave in the inherited common law adversarial system, judges must take more control of the proceedings rather than merely acting as umpires and leaving it upon litigants and/or their advocates to determine the pace of litigation with their usual "adjournment" prayers!

Much as we all agree that a court is like a "***Temple of Justice***" - a sacred place for administering justice, judges no longer have to sit patiently as "Monks" awaiting for the unfolding "battle of wits" between two rival parties in a legal dispute. There is need now for our judiciaries to think seriously and take action by having in place court management and case management. This requires judges to assume a more active role in managing

both their case dockets (*case management and caseflow management*) and the courts (*court management*) thus fulfilling the vision of "*timely and quality justice for all*."

I thank you all very much for your kind attention