

COMMITTAL PROCEEDINGS AND CONSTITUTIONAL PRINCIPLE OF UNDUE DELAY IN DISPENSING JUSTICE TO ACCUSED PERSONS

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GENERAL INTRODUCTION

Courts in Tanzania Mainland has been entrusted with the responsibility of dispensing justice to individuals.ⁱ In order to respond to the constitutional principle which requires courts to dispense justice without delay, the parliament has enacted a number of statutes both substantive and procedural to guide courts in determining individual rights and duties. The Civil Procedure Codeⁱⁱ and Criminal Procedure Actⁱⁱⁱ are among the procedural laws which have been enacted by the parliament to enable courts to dispense justice to individuals without delay. The procedures laid down in these two pieces of legislation cited herein above, has to be followed by courts in determining individual rights and duties. Timely delivery of justice to individuals does not depend only on the speed the magistrate or a judge puts in determining a particular case but also the procedures to be followed by that magistrate or judge in reaching to a final and conclusive decision. Fauz Twaib in his article^{iv} was of the view that procedural law governing civil suits in Tanzania Mainland is designed in such a way that if properly observed by courts may facilitate to reduced delay in determining suits filed before the court. However, the delay in determining civil suits by courts in Tanzania Mainland is caused by magistrates, judges, lawyers as well as litigants themselves.

Note has to be taken that delay in determining cases facing accused persons more particularly murder, treason, terrorism, drug trafficking and economic offence are not a direct result of a magistrates, judges, advocates or litigants but rather the procedures stipulated in the Act of parliament. This is because the magistrate or a judge while determining a case is obliged to follow the procedures laid down by the law and non-observance of the procedure by the magistrate or the judge may lead to the proceeding being declared nullity by the higher court.^v

Procedural laws help the court in the process of determining cases filed before it by providing the manner the case may be determined and the time to be completed by the court.^{vi} Furthermore, procedural laws respond to all questions regarding the determination of cases thus they are body of rules in which the tribunal or the court is enabled to determine individual rights and duties.^{vii}

Procedural laws are very important in the process of handling disputes instituted by parties hence may enable the court or the tribunal to achieve the following:

- To treat each party in a case equally.
- To deliver a decision on time.
- Create trust and confidence to the judiciary by the people.
- Encourage parties to settle their disputes out of court.^{viii}

While procedures are important for individuals to access justice in the court or tribunal, there is an argument that most of the procedural laws existing today have been in use for many years as a result they cause the process of determining cases difficult leading to the delay of justice to the people.^{ix}

In some countries, court procedures have been in use for long time as a result they do not respond to the current development happening in the world. The procedural laws applicable today by courts are those procedures existed during colonialism and after independence.¹¹The world is changing technologically and the society is also changing therefore court procedures should be that which respond to these changes.

In Tanzania Mainland For example, committal proceedings are considered to be one of the oldest procedures traced from the Criminal Procedure Code.^x The procedure has been in use from 1930 to the present moment with few amendments. The procedure is conducted in the district or Resident Magistrate court for offences involving murder, treason, terrorism, drug trafficking and economic. However, there are complaints from the people, suspects and stake holders on the effectiveness of this procedure. There is no doubt that due to the technological development happening in the world today, court procedures should be that which helps the court to determine the offence within a short period of time and thus enable the accused person to achieve justice timely. In order to assess whether committal proceedings respond to the constitutional principle of undue delay in the determination of offences which pass through subordinate courts for committal proceedings, it is important first to understand the meaning

of committal proceedings, the manner it is conducted in subordinate courts and whether committal proceeding may lead to length of proceedings in courts.

THE MEANING OF COMMITTAL PROCEEDINGS

Committal proceedings has been defined by the Victoria Law Reform Commission^{xi} to mean the procedure by which suspects who have committed serious offences are arraigned before the lower court so as to find out whether there is enough evidence to take them to the higher court for the determination of their offences.

Section 2 of the Criminal Procedure Act^{xii} defines the word committal proceedings to mean the procedure conducted in the district/Resident magistrate court after which the suspect is sent before the High court for the determination of his accusation.

The same meaning has been also provided under section 2 of Kenya Criminal procedure Code¹⁴ to mean procedure conducted in the lower court with the expectation of sending a suspect to the court with power to determine the offence against him.

THE HISTORY OF COMMITTAL PROCEEDINGS IN TANZANIA MAINLAND

Committal proceedings in our jurisdictions were governed by the law called Criminal Procedure Code.^{xiii} At that time, committal proceedings were conducted in the form of an inquiry where the magistrate presiding over the matter was required to read and explain the accusation to the suspect and the suspect was required to remain silent.^{xiv} Thereafter, the magistrate conducting preliminary inquiry could write the evidence of witnesses taken on oath and the suspect was afforded the right to ask any question to persons who were called to give evidence. The process continued although there were some changes which occurred from 1932 to 1945.^{xv} Where the magistrate satisfied that the evidence given by the prosecution was sufficient for taking the suspect to the higher court to determine his case, then the presiding magistrate had the task of drafting the accusation against the suspect. The suspect was required to summon his witnesses if any to give evidence before the court.^{xvi} After the case had been

heard the prosecution and defence side, the presiding magistrate was invited to evaluate the testimony given in court and make a ruling. Where the magistrate satisfied that the evidence at hand was not enough to send the suspect to the High court for trial, then the suspect had to be set free. But if the evidence given could support conviction, then the suspect was taken to the court with power to hear his case. Where the need arose, the Attorney General had power to order the police officer to continue with investigation so as to add some witnesses or Exhibits.^{xvii} Once satisfied that there was a strong case against the suspect, the Attorney General was obliged to draft the charge against the suspect which was submitted to the High Court. If the offence was bailable, subordinate court had power to grant bail to suspect. Then, all the prosecution evidence was considered to have been made known to the suspect.^{xviii}

However, in 1945 the Criminal Procedure Code of 1930 was ended instead another Code was enacted which came into operation in 1945 in which the DPP office was established to control the prosecutions the work which was previously done by the Attorney General. It is important to note that the 1945 Code could not maintain the role played by magistrates in committal proceedings thus the main functions of magistrates while conducting committal proceedings were done away with. It is on the basis of the above illustration that under CPA we have a situation where the role of the subordinate court magistrate is very minimal, whose powers have become merely to read or cause to be read to accused statements of witnesses and exhibits after which the accused is committed to the High court for trial.

THE LEGAL BASIS FOR HOLDING COMMITTAL PROCEEDINGS IN SUBORDINATE COURTS

Section 244 of Criminal Procedure Act^{xix} sets the basis for holding committal proceedings in subordinate courts. The section makes mandatory for accused person (s) charged with the offence of murder, treason, terrorism, drug trafficking and economic to be placed before subordinate courts for committal proceedings after which the accused is sent before the High court for trial.

Likewise, it has been provided that the High court may make an inquiry of any criminal case and determine any offence within its power at a place where it usually sits but the High court has no power under section 93 of the Criminal Procedure Act^{xx} to determine any criminal offence which has not been placed before subordinate court for preliminary inquiry and the

accused is sent to the High court for trial.^{xxi}The same view was expressed in R v. Asafu Tumwine^{xxii} where the court was of the view that the High court could not entertain the offence which was supposed to be subjected to committal proceedings but it was not. Basing on the above provision of the law and case law, it is well settled that the High Court cannot try the offence of murder, treason, terrorism, drug trafficking and economic which was supposed to undergo committal proceedings but it was not.

THE CONDUCT OF COMMITTAL PROCEEDINGS IN TANZANIA MAINLAND

Section 244 of the Criminal Procedure Act^{xxiii} makes mandatory for accused person (s) charged with murder, treason, terrorism, drug trafficking and economic offences to be placed before the district or Resident Magistrate court for preliminary inquiry. Subordinate courts have no power to determine the offences mentioned herein above so the law requires subordinate courts to conduct preliminary inquiry then to send accused person to the court with power to determine his offence. A person having been arrested under the suspicion that he/she has committed the offence which is not determined by the district or Resident Magistrate court, should be brought before the court of the local area where the offence was committed as soon as practicable.^{xxiv} The court in which the suspect is arraigned shall without delay conduct preliminary inquiry.^{xxv}

When a suspect has been brought before a district or Resident Magistrate court, the magistrate will order the prosecutor to read the accusation to the suspect but the suspect is not required to make any reply to the accusation against him.^{xxvi} The magistrate is required by the law after reading and explaining to the suspect his accusation, to address him/her that the court has no power to determine the matter against him/her. Subordinate court is also required to tell the suspect that he/she will be tried later on by the court having power to determine the matter. That when he/she is taken to the court of competent jurisdiction, he/she will be given a chance to make his defence and call witnesses to support his evidence if any.^{xxvii}

If the suspect is sent to the prison pending the completion of preliminary inquiry in subordinate court, or if he is released on bail during the preliminary inquiry, the investigator of the case is required to type statements of witnesses proposed to be called to the High court to give evidence

and after the typing is complete, to send those statements of witnesses together with police case file to DPP or state attorney acting on his behalf to determine if there are enough evidence to send the suspect at the High court for the determination of the case against him.^{xxviii}

The DPP or state attorney acting on his behalf having read the police case file and statements of witnesses proposed to be called to give evidence before the High court if he is satisfied that the evidence at hand is not enough to justify sending the suspect before the High court to face his trial, shall release accused without delay. And if there is a ground to believe that additional investigation if conducted would come with a different outcome, then he shall order investigation to be conducted.^{xxix}

Where the DPP or state attorney acting on his behalf is satisfied that there is sufficient evidence to warrant prosecuting the suspect, he will draw information. The information will be signed by him and he will be required to send it to the High Court accompanied by three copies of statements of witnesses.^{xxx} When the information has been sent before the High court, the registrar of the High court will then send a copy of the information accompanied by statements of witnesses to the court holding preliminary inquiry.^{xxxi} A subordinate court having received such documents will then cause accused to appear before it and the prosecutor will read to accused the information, statements of witnesses and other documents proposed to be used as evidence during the trial. Having received a copy of information that the suspect is required to the High court for the determination of his case, the court conducting preliminary inquiry will order the suspect to be brought from prison and serve him or his advocate a copy of information, statements of witnesses and other documents intended to be used by the prosecution during the trial.^{xxxii} The suspect after being brought to the court, the prosecutor will read to him information, statements of witnesses and contents of the documents proposed to be used as evidence at the trial in the High Court.^{xxxiii} The court conducting preliminary inquiry has the duty to tell accused that he has been informed of the evidence the prosecution proposes to use during the trial at the High Court. He shall keep his defence and if he wishes, may tell the court whatever he wants concerning the accusation

Whatever the suspect says will be written by the court holding preliminary inquiry and the statement made by the suspect will be read to him so as to enable him to clarify his statement or to add anything if he wishes.^{xxxiv}

The court will then write everything the accused says. Whatever he has said should then be

read over to him and he must be asked if it has been recorded correctly. If he is satisfied that it is correct, he should be told to sign at the end of the statement. If he has anything to say in addition to the statement, or if he wishes to correct what has been recorded, he must be allowed to do so. Such correction or addition must also be recorded and read over to him. When the accused is satisfied that the statement is correct, he will be made to sign it and when all this has been done, the magistrate will order the suspect to be sent to the High Court for the determination of the matter against him.^{xxxv}

As soon as possible the court conducting preliminary inquiry having complied with the mandatory provisions of the law, will make a list of persons the DPP proposes to bring as witnesses and also will ask the suspect if he/she has witnesses. If the suspect will be having witnesses, then he will be required to mention their names and the place where they can be found. The court will write the name and place of accused witnesses he had mentioned for the purpose of sending summons to them when the time arrives.^{xxxvi} The suspect who is expected to be sent to the High Court for the determination of his case will be given free of charge a copy of proceeding together with statement of witnesses and other documents expected to be used by DPP as evidence before the High Court.^{xxxvii} Subordinate Court conducting preliminary inquiry has to explain to the suspect whose offence is to be determined by the High Court that a copy of proceeding, statement of witnesses and other documents is his right to be given.^{xxxviii} Lastly, the court must make sure that a copy given to the suspect contains information, statement of witnesses, other documents and court proceeding from the date when he was arraigned before the court for the first time to the date when the last order of sending him to the jurisdiction of the High Court was given.^{xxxix}

TRIAL OF CRIMINAL CASES WITHOUT UNDUE DELAY UNDER INTERNATIONAL CONVENTIONS

Any person suspected to have committed the offence, his case has to be determined without delay. This right has been provided in various Treaties.^{xl} For example, it has been provided that in hearing an accusation brought before the court against any person, such case should be heard without delay.^{xli}

Also, in hearing a civil suit or other accusation of a criminal nature, each person shall have his case determined fairly by a court or other forum created by the law in an open court. The court or other forum must be free and without bias.^{xlii} Apart from that, when a court is determining a case of any nature against any person, each person shall be afforded an opportunity to be heard. The court determining such matter must be free, without bias and of competent jurisdiction. The determination of the matter must be conducted without delay.^{xliii} Furthermore, each person has the right for his matter to be determined without delay and biasness by a free court or other forum.^{xliv}

In addition, each person has the right to be heard without delay and this right starts when the matter is determined by the court to the time when the determination reaches to an end and the court prepares the judgment. In all these stages mentioned herein above, there must be no delay and the procedure should be that which ensures that the hearing of the matter before the court or other forum will not result to delay.^{xlv} State parties to the international treaties has an obligation of making sure that each person under the age of eighteen alleged to have committed the offence is tried without delay by a court which is free and seized with competent jurisdiction. Such person should be tried without bias and should be assisted in all stages with regard to his age.^{xlvi}

TRIAL OF CRIMINAL CASES WITHOUT UNDUE DELAY UNDER THE CONSTITUTION OF TANZANIA

The requirement for a suspect of an offence to be heard without delay not only is an international convention's guarantee but also a constitutional guarantee. For example, it has been provided that courts should not delay without reason the determination of any matter before it.^{xlvii} This means that if a delay will occur while determining civil or criminal case without any reasonable ground, such delay will be considered to be a breach of constitutional principle by the court.

TRIAL OF CRIMINAL CASES WITHOUT UNDUE DELAY UNDER OTHER CONSTITUTIONS

The constitution of Zanzibar has provided for speedy disposal of criminal cases by courts. This means that all courts in Zanzibar are required to determine and dispose criminal cases without delay.^{xlviii} The constitution of Kenya has provided that courts and other tribunals in the exercise of their judicial powers should make sure that justice is not delayed to individuals.^{xlix} On the other hand, the constitution of Uganda has provided that courts in determining cases of civil and criminal nature should make sure that the dispensation of justice is not delayed to the parties in a case.¹ Likewise, the constitution of South Sudan has provided that courts while determining cases before it should strive to ensure that the dispensation of justice to individuals is done without any delay.

The same position was stated in the case of Husianara versus State of Biharⁱⁱ where the court expressed its view that speed in the determination of cases is the requirement of article 12 of the India constitution hence it is the responsibility of the government to put in place procedures that may facilitate the determination of cases without delay. Almost every constitution of a particular state requires individual rights and duties to be determined without delay.

COMMITTAL PROCEEDINGS AND THE NEED TO DETERMINE CRIMINAL CASES WITHOUT DELAY

Definition of Delay

The word delay as far as the determination of criminal cases are concerned refers to the determination of a case for long time without any reason calculated from the day when a case is brought before the court to the day when the judgment of the court is pronounced or delivered.^{lii}

The problem of delay in determining criminal cases in Tanzania Mainland is historical and poses a challenge to the judicial officers. It occurs mostly in criminal proceedings which starts from the district or Resident Magistrate court in which accused persons charged for offences such as murder, treason, terrorism, drug trafficking and economic offences are required to be

arraigned before subordinate court for committal proceedings after which they are committed for trial in the High court. Accused person is therefore held in custody for many years waiting for DPP to decide whether the evidence gathered is enough to justify sending him/her to the jurisdiction of the High court for trial.^{liii}

Lord Denning once observed that failure to determine cases on time is a mistake which is difficult to bear.^{liv}

Causes of Case Delay in Tanzania

- i. There are two sides in a criminal case namely prosecution side and defence side.

Prosecution side may cause delay in the determination of a case by failing to bring witnesses on time. The defence side may also cause delay if the accused person is not brought to court on time by prison authorities where he is withheld. On the other hand, advocates who represents the suspect may cause delay if they will fail to appear to the court on the ground that they have other sessions in other courts. This may lead to the case to take long time to be finalized by the court.

- ii. Unnecessary adjournment. In Tanzania Mainland parties to the case may seek several adjournments which is unnecessary. Adjournment has to be granted to the part who has requested so as to create the atmosphere of fair trial. However, most of the adjournment by the court is without justification. It is just a technique used by the parties to prolong court proceedings.^{lv}
- iii. Absence of parties. Non-appearance of the parties to the case may lead to the delay because the case will be adjourned to wait another party to appear especially when there are numerous parties in the suit.^{lvi}

Effects of Case Delay to Litigants

Case delay prevent timely delivery of justice to individuals. The delay not only led the parties to think that the tribunal or the court is corrupt, but also, it may lead the parties to have negative attitudes towards the court or tribunal encouraging citizens to take actions by themselves.^{lvii}

When the case takes long time to be finalized in court, the reality disappears and witnesses fail to remember the event hence the testimony before the court becomes hard. Length in

determination of cases by courts cause some exhibits to be damaged. Sometimes failure to determine cases on time make suspects who are in prison to suffer more.

It has been provided that every individual suspected to have committed an offence not be considered guilty until there is a proof that he/she has committed the offence. Delay in determination of cases by a court goes contrary to the principle of innocence due to the fact

- i. Recording of the proceedings. Magistrates and judges record their proceedings on the court files and this may take long hours especially when there are many witnesses without the assistance of the technology. The case which involve many witnesses will

force a judge or a magistrate to take long time to record their evidence in the court file causing a delay in the determination of a case facing accused person. Preliminary objection. One of the causes of case delay is preliminary objection.

Preliminary objection can be raised by the party at any stage before and after the hearing has started. The magistrate or the judge presiding over the matter has to hear the objection first and issue a ruling before going on the merits of the case. Several objections in a case may cause the hearing to slow down and it is mostly used by advocates even where there is no legal basis to do so that prisoners who are detained in prison for serious offences will stay for long time in prison more than the sentence they were required to serve by the law.^{lviii} If the court will delay to deliver its decision on time, the parties may spend more money attending court sessions. Sometimes the money spent may be more than that they are supposed to be awarded by the court. This not only increases expenses in a case but also forces the parties in a case to opt either to make settlement by themselves or leave their cases uncompleted. Congestion of suspects in prison. Delay of cases may lead to congestion of suspects in prisons and thus increase costs to the government to feed them which is a burden to tax payers. Back logs of cases. Delay of cases may lead to backlogs of cases because there will be many case files pending before the court.

CRITERIA TO BE USED IN ASSESSING UNDUE DELAY IN THE DETERMINATION OF CRIMINAL CASES IN TANZANIA MAINLAND

The European Treaty for Human Rights has stipulated that the determination of cases of a criminal nature should be finalized without delay. The Treaty has established the court with power to determine if a particular criminal case was finalized contrary to the treaty by a state party.^{lix} In finding out whether courts from state parties to the treaty had prolonged the determination of a criminal case, the Court looked into the time when the accused was notified the allegation against him by the court or when he questioned the allegation against him and the period ends when accusation was heard by the court and the accused was either punished, set free or otherwise the charge being dismissed.^{lx}

Reasonable or Unreasonable Delay in Criminal Cases

In the case of McFarlane v. Ireland^{lxi} and the case of Idalov v. Russia^{lxii} the Court was of the view that delay in the determination of criminal cases have to be measured by looking the nature of the case itself as well as other factors. These factors are hereunder discussed:

- i. The time accused stays in prison. In criminal matters accused should be made aware of the outcome of the proceeding as soon as possible. Also, because the accused may stay in remand prison for a long time waiting for his case to be determined by the court, it is important that the accused case be determined without delay.
- ii. Complex of a case. The complex of a case is measured by looking suspects involved in the commission of a crime, persons affected by such crime, offences accused charged of, volume of a case file, documentary evidence involved, witnesses called to give evidence, sessions held by the court and a number of pages used in composing judgment of the court. Therefore, complexity of a case will require the determination of case to take a long time. For example, in Breinesberger and Wenzelhuemer v. Austria^{lxiii} the court held that it was reasonable to finalize the case within seven years and five months due to the complexity of a case. Government agencies involved in a case. Government agencies involved in a case like investigation machinery may sometimes cause the determination of a case to take long time. The court normally starts hearing a case when the investigation is complete so if the investigation is not complete, the court will keep adjourning the matter. Delay may also occur when the

court is waiting to receive expert opinion regarding a particular issue of which without expert opinion the court may not be in a position to reach at a just decision.

iii. Failure to attend by a party to the case. Nonappearance of a party to the case may prolong the determination of a particular case because the court cannot hear the case in the absence of the other party. Also, adjournment of a case may occur if one of the parties to the case is unable to attend as a result of sicknesses. For instance, in Krakolinig versus Austria^{lxiv} the case took for 25 years to be completed therefore the

court was of the view that the repeated postponement and adjournments were the result of health problem of the accused so the proceedings were reasonable.

WHETHER COMMITTAL PROCEEDINGS CAUSE UNDUE DELAY IN THE DETERMINATION OF CRIMINAL CASES IN TANZANIA MAINLAND

The word “without reasonable ground” as used in the constitution^{lxv} has to be given its ordinary meaning to mean trial of a case without delay and where the delay occurs such delay should be accompanied with strong reasons.

The test and criteria used by the European Court on Human Rights in determining if article 6(1)^{lxvi} was respected by the member states should be applied in the same way to determine whether article 107A (1)(2)^{lxvii} is respected by courts while determining criminal cases filed before it.

In order to assess whether the conduct of committal proceedings in subordinate courts may lead to unreasonable delay, time spent by accused person has to be counted from the day when he was arraigned before subordinate court for committal proceedings to the day when the case is finally and conclusively determined by the court of competent jurisdiction. There are several areas which indicate that there is unreasonable delay in dispensing justice to accused person(s) facing murder, treason, terrorism, drug trafficking and economic offences as hereunder discussed:

One, it has to be noted that the main reason for holding preliminary inquiry in subordinate

courts is to inform the accused person charged with capital offences the evidence which the prosecution intends to adduce at the trial.^{lxviii} This task could be performed within one month. However, the practice has revealed that the task of informing the accused person the evidence which prosecution intends to bring during the hearing goes for many years. This leads to delay in dispensing justice to accused person without reasonable ground.

Two, the role of a magistrate during committal proceedings is just to adjourn the matter pending before him until when the DPP decides either to prosecute the accused or to release him. The time within which this process takes is uncertain leading to unreasonable delay in dispensing justice to persons charged with serious offences.

Three, section 225 of the Criminal Procedure Act^{lix} stipulates the time limit for adjournment of ordinary criminal cases triable by subordinate court to be sixty days. However, there is no time limit for adjournment of criminal cases involving murder, treason, terrorism, drug trafficking and economic offences.

Lack of the provisions of the law to control adjournment of cases involving capital offences lead to unreasonable delay in dispensing justice to accused persons.

Four, the suspect may be sent to the High court for trial but the High court in its wisdom may order the committal court to conduct committal proceedings afresh for non-observance of the law hence delaying further the determination of the matter facing the accused person (s).

THE ROLE OF SUPERIOR COURTS IN ENSURING THAT CONSTITUTIONAL PRINCIPLE OF UNDUE DELAY IS IMPLEMENTED

The district and Resident Magistrates courts have no power to interfere with ongoing police investigation. Likewise, the High court has no jurisdiction to interfere with the delay resulting from the conduct of committal proceedings pending before subordinate courts. Lack of supervisory power over committal proceedings by courts conducting committal proceedings or the High court cause unreasonable delay in the dispensation of justice to accused persons. Refer also the case of DPP v. Shaban Donasian and 10 others^{lxx} and the case of DPP v. Bookan @ Ally and 7 others^{lxxi}

THE WAY FORWARD

The judiciary of Tanzania as well as the Government have urged magistrates and judges to dispense justice to individuals without delay. For example, in the district and Resident magistrate courts, the determination of cases should not go beyond 12 months while at the High court, the period should not exceed two years. This is only a guideline and not the requirement of the law. In order to make sure that justice is delivered to individuals without delay, there must be a provision of the law stating the time framework within which a particular case is to be completed by the court. Also, subordinate courts as well as the High court should be given supervisory power over committal proceedings to prevent delay caused by investigators, RCO and DPP. This will encourage other government agencies involved in committal proceedings to speed up the process. Like the European Court on Human Rights which has been given power to determine whether article 6(1) of the European convention on Human Rights were observed, the African Court on peoples' and Human Rights should be given power to determine whether state parties implement article 7(10)(d).^{lxxii}

CONCLUSION AND GENERAL REMARKS

The determination of criminal cases without delay is very important and this will lead to the implementation of article 107A (1)(2)^{lxxiii} by courts. However, it is obvious that the conduct of committal proceedings in subordinate courts contravene the mother law since the process cause unreasonable delay in the dispensation of justice to accused persons.

In order to go hand in hand with the technological development happening today, it is time now for some court procedures which lead to unreasonable delay in the dispensation of justice to be repealed. This is because the effectiveness of the court is measured by the time used by the court in determining a particular case filed before it. Costs, energy and resources can best be used if court procedures do not lead to unreasonable delay in the dispensation of justice to individuals. This article is aimed to show how committal proceedings is conducted in Tanzania Mainland for offences which are not triable by subordinate courts and how it causes unreasonable delay in the dispensation of Justice to accused persons facing Murder, treason, terrorism, drug trafficking and economic offences hence contravening constitutional principle which require courts not to delay the determination of cases to persons facing

criminal offences.

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ⁱⁱⁱ Chapter 20 Revised Edition 2019

^{iv} Legal Empowerment of the Poor: Access to justice and the Rule of Law, p. 17

^v See Hamis v. R (1993) TLR 213

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^{ix} CMJA Conference Report (2018), Building an Effective, Accountable and Inclusive Judiciary, CMJA, United Kingdom p. 87

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xli *Ibd.*

xlii Article 8(1) European Convention on Human Rights, 1950

xliii Article 8(1) American Convention on Human Rights, 1969

xliv Article 7(10)(d) African Charter on Human and Peoples' Rights, 1981

xlv Article 14 Office of the High Commissioner for Human Rights, General Comment No. 13, 04/13/1984

xlvi *Ibd*

xlvii Article 107A (1)(2)(b) Constitution of the United Republic of Tanzania, 1977, Chapter 2 of the Revised

Laws

xlviii Article 12(6)(e) constitution of Zanzibar 1984 as amended by Act No. 2 of 2002

xlix Article 159(2)(b) constitution of Kenya 2010

¹ Article 126(2)(b) constitution of the Republic of Uganda, 2006 as amended

li (1980)1 SCC 98

lii CMJA Conference Report (2018), *Building an Effective, Accountable and Inclusive Judiciary*, CMJA, United Kingdom, p.22

liii Op. cit. p.24-25

liv See *Allen v. Sir Alfred McAlpine & Sons Ltd* (1968) 2QB 229

lv CMJA Conference Report (2018), *Building an Effective, Accountable and Inclusive Judiciary*, CMJA, United Kingdom, p.26

lvi Loc. cit.

lvii Loc. cit.

lviii Loc. cit.

lix See article 6(1) of the European Treaty on Human Rights 1950

lx See *Michelioudakis v. Greece* No. 54447/10,3 April 2012 at paras 13-14 and 39

lxi See *Michelioudakis v. Greece* No. 54447/10,3 April 2012 at paras 13-14 and 39

lxii No. 5826/03, 22 May 2012 at para 186

lxiii No. 46601/07, 27 November 2012 at paras 30-33

lxiv No. 33992/07, 10 May 2012, at para 27

lxv Article 107A (1)(2) The constitution of the United Republic of Tanzania 1977, Cap 2 o the Revised Laws

lxvi European Treaty on Human Rights 1950

lxvii *Ibd*

lxviii The Report of the Judicial System Review Commission 1977, Dar es salaam Tanzania, p.193

lxix Cap 20 R.E 2019

lxx Criminal Appeal No. 196 of 2017 (CAT)(unreported)

lxxi Criminal Appeal No. 217 of 2019 (CAT) (unreported)

lxxii African Charter on Human and Peoples' Rights, Banjul Charter, 27 June 1981

lxxiii The constitution of the United Republic of Tanzania 1977, Chapter 2 of the Revised Laws of Tanzania