

Review of Case Management System in the High Court of Tanzania: Criminal Justice Perspective

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Abstract

The article reviews the criminal justice case management system in the High Court of Tanzania, focusing on scrutinization, scheduling, and control at various stages of criminal case processing. It highlights significant gaps in the system, notably in the initial scrutinization of cases at admission, leading to the progression of flawed cases. The article points out that, with the exception of economic cases, the law's failure to schedule events and control mechanisms results in inefficiencies and delay. In the plea-taking and preliminary hearing step, the law's effectiveness is undermined by the parties' reluctance to cooperate and the scheduling of time being provided only for economic cases. The trial phase suffers from a lack of clear legal directives on commencement timing. Furthermore, the article points out inadequacies in scrutinization and scheduling during the hearing of appeals, revisions and other applications. It also points out that the control element is, during that step, restricted by case law. While implying scrutinization duties and setting a 90-day rule for judgments, the judgment step lacks robust enforcement mechanisms. The article finds that significant systemic gaps persist despite some case management system elements, especially in non-economic and non-appellate cases,

leading to delays in criminal justice dispensation. Finally, the article recommends some reforms to address the shortcomings identified in the applied criminal justice case management system.

Keywords: Case Management System, Criminal Justice, Timely Justice Dispensation.

Introduction

Criminal justice embodies the methods used to handle persons accused of criminal offences and offers remedies to victims and society.ⁱ It aims to prevent and control crime, maintain public peace and order, protect victims, offenders, and society's rights, punish and rehabilitate the guilty, and protect life and property.ⁱⁱ Criminal justice is a multisectoral system, the review focuses on the High Court of Tanzania, mandated to administer justice timely.ⁱⁱⁱ To fulfil this mandate in criminal justice dispensation, process efficiency is essential to guarantee expedient determination with minimal effects to individual rights and freedoms.^{iv}

Case management system is a tool employed to cater to the need for timely justice dispensation among other things. While what is meant by case management system is subjective, its essence is establishing court control in administering cases during their lifespan for expeditious, fair and frugal resolution.^v The typical characteristic of an adversarial system, where parties are left to set the pace of litigation, was observed to cause delayed disposition of cases and growing litigation expenses.^{vi} Through case management system, the mechanisms used in administering cases can be analysed and adapted to remedy such perils.

As a field of study, case management system as it relates to the judiciary is not vast in its jurisprudence and the situation is worse in the Tanzanian context. This notwithstanding, case management system as a tool to enhance efficiency can be understood through its theoretical underpinning. The theory of constraints argues that the swift identification and removal of the bottlenecks, ensures efficiency.^{vii} The scientific management theory posits methodical management to be the cure for inefficiency.^{viii} The role theory argues that efficiency would be the obvious result if each individual undertakes their prescribed or expected duties.^{ix}

Together with these theories, case management system is divided into three types based on the extent of court's control over proceedings. The active type of case management system vests absolute control over the pace of the case on the court.^x Passive case management system leave such control on the parties and the hybrid type of case management system, fuses the characteristics of an active and a passive case management system into one system, where in some instances it is active and in other passive.^{xi}

Some essential elements need to exist to identify the type of case management system applied. Such elements include the early and continued scrutinization of filed cases, the scheduling of time and events the case would go through, and the court's supervision over all processes.^{xii} The existence of all three elements is indicative of an active case management system, their absence is indicative of a passive case management system and the scant presence suggests there being a hybrid case management system. Though this tool and its potential are known, its efficacy in addressing the length or delay of criminal cases is wanting in light of the pendency of backlog cases in the High Court of Tanzania.

This article reviews the criminal justice case management system and how the same works to achieve timely justice dispensation. In doing so, the article discusses the steps a criminal case goes through, during its pendency in the Court and tests the existence and or sufficiency of essential elements of case management system in the administration of criminal justice before the High Court.

Methodology and Limitation

This article used both doctrinal and empirical approaches of research and the data was triangulated to form a comprehensive discussion. With their informed consent, primary data was gathered from in-person and teleconference semi-structured interviews with 208 respondents, 94 questionnaire respondents, the review of legislation, circulars and original case files accessed from the Arusha, Mwanza, Dodoma and Dar es Salaam High Court Registries. The 208 interview respondents included the Chief Justice of Tanzania, 18 Justices of the Court of Appeal, 66 Judges and 50 Registrars of the High Court, 52 State Attorneys, including the Attorney General (AG), Solicitor General (SG) and the Director of Public Prosecution (DPP)

and 21 senior advocates with over ten years of practice experience. The 94 questionnaire respondents included 26 Judges Law Assistants, 26 Records Management Assistants and 42 Litigants with cases before the High Court which have been pending for more than 24 months. The interviews and questionnaires offered real life insights into the criminal justice practice and various challenges borne thereof.

Secondary data was collected from books, journals, theses, dissertations, conference papers and authoritative reports. The researchers' experiences as the Principal Judge of the High court and lecturers of law, have been of profound utility in writing this article. There are a few limitations of this research. It is worth noting that the essence of this article takes a novel look at the issue of case management system. As such, local literature on the topic is scant. This has caused great reliance on literature from other jurisdictions and their relation and inference to the High Court's context.

Criminal Case Steps *Vis-À-Vis* Case Management System Elements

The steps under review are categorized into five groups which are the commencement of criminal cases, plea taking and preliminary hearing, trial of original cases, hearing of appeals and revisions and judgment. Admittedly, some of the steps covered are a combination of steps. Such a review style is adopted with cognizance of such combined steps' close relation, their connected execution in practice and for better discussion contextualization.

Commencement of Criminal Cases

In the High Court, criminal cases are commenced by filing an information in original jurisdiction cases, petitions or memorandum of appeal for appeals and chamber summons for applications.^{xiii} Applications can also commence orally.^{xiv} Together with the provision for the filing of such documents, the law provides the format and content that each document ought to comply with.^{xv} While providing the necessary document format and content, the law does not sanction any non-compliance with those requirements.

Following the establishment of the Electronic Filing Systems (EFS), the institution of cases before the High Court is done electronically.^{xvi} In this filing mode, the respective registrar is

the admission officer.^{xvii} Through this role, the registrar becomes the primary level of scrutinization of the documents they receive and admit. At the admission of an information, appeal or application during the commencement of criminal cases, the Criminal Procedure Act (CPA) does not provide a legal requirement for the documents to be scrutinized to confirm their compliance with the law requirement before the same are admitted. The law is silent on that element of case management system as far as the registrar, the admission officer, is concerned.

Nonetheless, even though the law does not cast the duty to scrutinize criminal cases at their commencement on any officer, the law provides for this element by restricting appeals and revision on interlocutory decisions or orders, or against a conviction on a guilty plea with the exception of its legality.^{xviii} Further, the law mandates that an appeal to the High Court be preceded by a 10 or 30 days' notice from the accused and DPP, respectively and be filed 45 days after that or within 30 days from the date of the decision for appeals from primary courts.^{xix} These limitations notwithstanding, the law does not provide for the rejection of criminal cases, which do not clear these limitations at their commencement. This has the effect of birthing preliminary objections on matters which could have been addressed earlier. In the case of *John Mshama Sanyiwa v Republic* the notice of appeal was filed 7 days beyond the 10 days limit. This appeal was admitted, assigned and proceeded to hearing. During the hearing stage, the state attorney raised a preliminary objection that the appeal was time-barred. The court deliberated, upheld the objection and dismissed the appeal.^{xx} The fact that this case reached the hearing stage, while the appeal was time-barred in its notice, is an example of the effects of the lacuna in the law with the screening of such defects.

As a secondary filter, the law allows the summary rejection of a baseless appeal.^{xxi} This rejection is based on grounds of appeal not being reasonably supported by evidence or grounds of complaint.^{xxii} Such scrutinization by the court presupposes the same being done by a Judge and not the registrar, as it results in a judicial order.^{xxiii} This becomes a secondary level of scrutinization. Though this can filter competent and incompetent cases, it is not purposed for document format and content deficiencies. As such, the possibility of having defective documents go unnoticed far into the advanced stages of the case and causing a delay in the determination of the case remains.

The law does not provide for the scrutinization element in the admission stage of the commencement of criminal cases. Again, the scrutinization provided for as to the competence of an appeal happens after the case has been assigned to a Judge and does not focus on the format and content compliance of a document. This gap in the law withers the legally provided scrutinization mandate. With this missing element, criminal cases can be delayed by the subsequent need to amend the information following an objection to remedy the defects.^{xxiv}

In practice, the Chief Justice's circular directive embodied an attempted cure of the absence of a legal requirement to scrutinize a filed document.^{xxv} It is directed that when documents are presented for admission, a registry officer should inspect the filed documents, present the same to the registrar who would then provide comments and take them to the Judge in Charge or Principal Judge for permission to or guidance on the admission of the same, at which point permission for admission may be granted or withheld and or other directives given.^{xxvi} From such directives, it would appear that the registry officer has the duty to scrutinize the filed documents by virtue of the word inspect. However, this inspection is for purposes of being able to estimate court fees, it neither covers cases without court fees, which is all criminal cases, nor the scrutinization of format and content.^{xxvii} Again, the directive mandates the Judge in Charge or Principal Judge to be the admission officers capable of permitting the admission or otherwise of a filed case.^{xxviii}

Other than that, the current admission practice through the EFS makes the registrar the admitting officer and not the Judge in Charge or Principal Judge; the intimated directives neither specify what the registrar ought to give opinions of, the grounds on which admission can be withheld nor do they provide sanctions for non-compliance. As a result, the scrutinization implied by these directives is left to the interpretation of and possible inconsistent application between responsible officers. Such inconsistent application of scrutinization does not tally with the scientific management theory, which links process efficacy to the systematic conduct of affairs. Otherwise known as taylorism, the theory is opposed to having processes left to the interpretation or discretion of implementors and favours systematic planning and execution.^{xxix} In the upshot, the manner in which the practice has sought to complement the

position of the law also falls short of sufficiently ensuring the scrutinization of filed cases as and when they are commenced.

Generally, in the commencement of the criminal cases, the law is silent as far as the scheduling of time and events element is concerned. The exception to this general situation is with economic cases. In these cases, after the filing of information, assignment has to be done within a maximum of one day.^{xxx} This same day assignment aims to hurry the matter through the commencement and pre-trial steps. Further, after an accused is committed for trial by the High Court, the law requires that the committal proceeding, order and information be transmitted to the High Court within 30 days.^{xxxii} These two positions of the law suffice to confirm the existence of scheduling of time and events in the commencement of economic cases. However, the study found that the requirement of same-day assignment of economic cases is not met in every such case.^{xxxiii}

Administrative means have been applied to cure the law's non-scheduling of time and events in other criminal cases. The Chief Justice and the Principal Judge in 2018 and 2019 promulgated two circulars to this end.^{xxxiiii} The Chief Justice's circular itemized 5 stages which a filed case ought to go through between its filing and the issue of initial orders.^{xxxv} In detailing these preliminary stages, the directives mandated and have been used to require that the five stages be completed on the same day save for when there are unavoidable circumstances to the contrary.^{xxxvi} Though this champions the concept of same-day case assignment, the directive leaves the door open for a slew of undefined and subjective reasons for non-compliance.^{xxxvii}

Despite the fact that the import of this provision of the circular has expedience as its aim, its wording has the potential of a counterproductive interpretation. The provision of the circular reads '*Hatua zote zinazotajwa katika aya ya 2, 3, 4, 5 na 6 na ni lazima zikamilike katika siku hiyo hiyo moja zinamotendeka...*'^{xxxviii} translated to mean two things. Either the stages described in paragraphs 2, 3, 4, 5, and 6 should be done within one day or the same day they are done. While one interpretation can champion the completion of all the stages on the same day, the other interpretation does not require same-day completion of the stages but rather requires each stage to be completed on the day it is undertaken. Thus, inspection for fee estimation, opinion on and permission of admission, assignment and initial orders would not necessarily be done

on the same day, but on the day any stage is commenced, it ought to be completed that same day.

Similarly, the Principal Judge's circular aims to expedite the conduct of committal proceedings and the onward plea taking and preliminary hearing.^{xxxviii} However, the commencement of criminal cases step, is not adequately covered. Once an information is filed in the High Court, the registrar ought to transmit the same to the district court with the conduct of the preliminary inquiry matter.^{xxxix} The law does not set the time within which the registrar should execute such transmission and the Principal Judge's circular is equally silent on that matter. By not scheduling the time within which to act, the transmission of the information to the district court for committal purposes can be delayed to the detriment of the purpose of the same circular aimed to curb delay.^{xl} The information filed with the High Court will remain pending without progress as the Court is incompetent to deal with it in any way without the committal proceedings.^{xli}

Again, the law does not set the time for events which follow the delivery of the committal proceedings to the High Court.^{xlii} This is covered by the circular which directs that after the committal proceedings are delivered to the High Court, assignment of the case to a Judge or Resident Magistrate with extended jurisdiction should be done within two weeks.^{xliii} This makes the assignment aspect of criminal cases commencement the only one dealt with by the circular. However, by the Principal Judge's circular directing the assignment of cases to be done within two weeks, it stands at odds with the Chief Justice's circular, which directs same-day assignment of cases.^{xliv} Arguably, the Chief Justice's circular is not specific to criminal cases during the plea taking and PH step while the Principal Judge's circular is. However, at the core of their directives, both circulars aim to expedite case processes.^{xlv} Though, it is a tenable argument that the Chief Justice's circular supersedes the Principal Judge's circular, the difference in their scope differentiates their use case scenario. Nevertheless, the contradiction between the two circulars does work to diminish their ability to complement the law in ensuring timely justice dispensation. Further, these directives, being borne of circulars, which are administrative measures, have no legal enforceability and brings complications in the due process.

This potential ambiguity in interpreting the directive from the Chief Justice's circular diminishes its potency in ensuring effective scheduling of time and events in the commencement of cases step. Again, the directives of both circulars provide no sanctions for when they are infringed and their administrative nature limits their enforceability in law. On top of these two deficiencies, awareness of the existence, import and application of these circular directives and others was found to be wanting among judicial officers.^{xlvi}

Succinctly, the control in the commencement of criminal cases alludes to the existence of mechanisms for ensuring that the step is dealt with aptly and swiftly. This can be seen in the legal provision that allows the assignment of economic cases to be done manually or electronically by either the Judge in charge, another Judge acting in that capacity, or the registrar in their absence.^{xlvii} This flexibility in assignment provides for multiple alternatives to ensure that the assignment stage is not unnecessarily delayed to the effect of delaying the whole case commencement step.

Apart from the provisions in the Economic Crimes Division Rules, the law is silent on features exhibiting the court's control over the case commencement step in other criminal cases. Coupled with the fact that same-day assignment is not consistently complied with and no sanctions are provided to enhance compliance, this study concludes that the control element of case management system as far as the commencement of criminal cases is concerned is lacking in most circumstances and only partly provided in economic cases.

To this end, the scrutinization element in the commencement of a criminal case has largely been found missing under the law at the admission stage, allowing the progress of a defective case into further steps. The scrutinization of appeals by a Judge as a secondary filter of competence increases the workload of judges on account of a matter that could have been dealt with at admission if so provided for. Existence of a secondary scrutinization confirms the non-existence or insufficiency of scrutinization at the earliest stage possible.

Again, the law has been found to lack the scheduling of time and events and the control elements of case management system in the commencement of criminal cases save for economic ones. This general lack of the three elements under the law supports the conclusion

that the case management system in the High Court lacks essential elements in the commencement of criminal cases step.

Plea Taking and Preliminary Hearing

The arraignment of an accused before the High Court for trial purposes starts with calling the accused to plead for the information.^{xlviii} When called to plea, the accused can plead guilty, not guilty, *autrefois* acquit *autrefois* convict, or a plea of not guilty can be entered on his behalf.^{xlix} A plea of guilty attracts an explanation of the material facts of the offence before the accused is called to confirm or change one's plea.^l A confirmed plea of guilty found to be unequivocal generally allows the immediate conviction and sentencing of the accused, marking the end of the case.^{li} On the other hand, a plea of not guilty attracts a Preliminary Hearing (PH) aimed at expediting the disposition of the case by sifting through the disputed and undisputed facts.^{lii} Plea-taking and PH are distinct steps done conjunctively in practice. Thus, they are discussed as a unified step for this article.^{liii}

By virtue of what occurs during plea taking and PH, this step is itself, a scrutinization of the case. Pleading to an information makes the case go to full trial or end at the plea stage. Calling an accused to plea is not only necessary for a fair trial but also shapes the direction of the whole trial to follow if at all one would. In a complimentary manner, PH was adopted as a tool for accelerated trials.^{liv} It gives the court and the parties an opportunity to identify facts that are not in dispute as against those in dispute.^{lv} In the end, PH produces a memorandum of agreed facts, which need not be proved during the trial, and crystalizes the issues which the court is to address itself.^{lvi} Identifying disputed and undisputed facts indicates the scrutinization of facts surrounding the case. The scrutinization facilitates the conduct of a focused trial, as the issues are made clear and allow the identification of necessary witnesses, subject to issues that need to be proved, all of which reduce the workload per case and assist in the timely dispensation of justice.

During this step, further scrutinization of the format and content of the information and any defect can be done following a preliminary objection or a motion.^{lvii} Such scrutinization can result in an amendment order, and the non-compliance of which can lead to the quashing of the information even before the accused is called to plea.^{lviii} This room for scrutinization can ensure

that cases founded on defective information are not prosecuted any further, thus reducing the court's workload, preventing cases which would be nullified on appeal for being defective, and ultimately working to facilitate timely justice dispensation.

As scrutinization tools, plea-taking and PH are sufficiently provided for by the law and can assist in ensuring the timely dispensation of justice. However, it has been opined that PH, especially in murder and other serious offences which attract capital punishment, is largely ineffective due to the parties' reluctance to cooperate, denying every fact, forcing the prosecution to prove everything, including the accused's name and consequently minimizing its anticipated advantages of an accelerated trial.^{lix} Further, though the law provides for the scrutinization of format and content, it is so provided at the second step of a criminal case to address matters that could have been covered at the admission stage had the law provided effective scrutinization.

Although plea-taking and PH are provided as events by law during the pendency of a criminal case, other than for economic cases, the time within which the step should be carried out is not provided. The plea-taking and PH step is to be conducted within 30 days after receiving the records of the committal proceedings in economic cases.^{lx} As much as the law provides the 30-day period for economic cases, its nationwide compliance is wanting.^{lxi} It was found that, up to 03rd November 2023, the Division had 16 cases out of 81 pending cases, equivalent to 19.75%, which had been pending for the plea taking and PH step for more than 30 days.^{lxii} In this situation, the law does provide for the scheduling of time and events element in the plea-taking and PH step but compliance is plagued by the challenge of a small number of Judges with instruments to entertain such cases and an even smaller number to whom such cases are assigned, a challenge which is neither born nor covered by the law.

Time within which to conduct plea taking and PH for all other criminal cases is a matter of practice covered by the Principal Judge's circular.^{lxiii} The circular directive matches the position with economic cases in that the plea-taking and PH step is also to be conducted within 30 days from when the records of the committing court were transmitted to the High Court.^{lxiv} Further, the circular directs that the plea-taking and PH step should be conducted per the normal business calendar of a particular High Court Registry and not through sessions.^{lxv}

In this way, the Principal Judge's circular supplements the law in the area it is lacking. Nevertheless, since circular directives fall short in the area of legal enforceability, their compliance succumbs to volition and inconsistencies. Notably, out of four High Court registries visited, three comply with the directive not to use sessions for this step and 1 schedules monthly sessions to that effect and does not give an order of assignment of the case.^{lxvi} Again, it was found that in the High Court registry at Dar es Salaam, out of the 103 cases received following the completion of committal proceedings in 2023, the plea-taking and PH step was conducted within 30 days for only 21 cases, equivalent to 20.38% and 82 cases, equivalent to 79.62% had the step conducted outside the 30 days window.^{lxvii} Reasons for non-compliance with this timeline were found to include Judges' unawareness of the timeline which leads them to schedule dates for the conduct of plea taking and PH according to their personal calendar together with all other cases and the unavailability of defence advocate especially where the case feature a large number of accused persons.^{lxviii}

From this examination, it can be gathered that the law only partly provides for the scheduling of time element in the plea-taking and PH step. It does so with economic cases and does not do so with every other type of criminal case. The law's provision of this timeline in the plea taking and PH step has assisted in curbing the number of economic cases which remain pending past 30 days to as low as 19.75% of all such cases. Comparatively, the lack of a legally provided timeline for the step in other criminal cases arguably contributes to the existence 79.62% of cases which remain pending beyond the 30 days provided by circular. Statistically again, economic cases are a small category of criminal cases. In 2022, out of 1,824 original criminal cases decided by the High Court, only 29 were economic cases.^{lxix} By the law providing for the scheduling of time in plea taking and PH for economic cases only, it does not do so for the more significant number of criminal cases it administers.

The control element of case management presupposes the power bestowed on the court to shape the direction and hasten the determination of cases before it. With the plea-taking and PH step, control is exhibited by the court's drawing of a memorandum of agreed matters, after which facts in dispute shall become clear.^{lxx} In as much as the law provides for the court's control over this step, it does not account for the party's reluctance to participate in the essence of the

step. Consequently, it has been observed that the accused usually denies everything, including one's name, making it necessary for the prosecution to parade a large number of witnesses to prove everything and minimise the overall benefit of the step.^{lxxi} As such, the control element is affected by other challenges the law neither creates nor addresses.

Trial of a Criminal Case

The trial step follows after entering a not-guilty plea and conducting a PH that establishes undisputed facts. It allows the prosecution to prove the disputed facts and elements of the offence against the accused, which may lead to the accused being called to give a defence and, finally, the judicial examination of each party's assertion.^{lxxii} During this step, parties present their evidence and arguments as to why the matter should be decided in their favour. The screening element of case management in the trial step features in the court's power to filter which evidence should be admissible, inspection of documents tendered as evidence before their admission and in issuing a case to answer ruling.

To prove disputed facts, both the prosecution and the defence present evidence in the form of oral and documentary evidence.^{lxxiii} During such presentation of evidence, the court has the mandate to limit the type of questions posed, forbid insulting, annoying, indecent or scandalous questions and only allow relevant questions.^{lxxiv} Again, the admissible type of documentary evidence is limited by law.^{lxxv} To enforce such limitations, the court must inspect every such document and see that it is relevant and admissible in law before admitting them into evidence.^{lxxvi} In this way, the law mandates the court to scrutinize the evidence brought to it. By doing so, the court can inhibit the presentation of irrelevant evidence, which only increases its workload unnecessarily, and enhance the chances of timely justice dispensation.

After the presentation of the prosecution's evidence, the court is required to decide whether a *prima facie* case has been established against the accused enough to require a defence, otherwise a conviction be passed or enter a not guilty verdict if this threshold is not met.^{lxxvii} Examining the prosecution's evidence is a pivotal point where the case can end or continue. A conviction verdict is based on the strength of the prosecution's evidence and not the defence's weakness.^{lxxviii} As such, by way of a case to answer ruling, the court can dispense justice timely

without continuing with a futile lengthy trial. It forms a scrutinization mechanism during the trial stage as it screens the evidence to see merit in the case presented. In turn, it saves the court's and the parties' time by not requiring either to sit through a defence for an unestablished accusation.

Scheduling of time for when the trial step should start is not explicitly covered by law. The law directs that trial should be by way of session and commence as soon as possible following the conclusion of the plea taking and PH step or at a future time.^{lxxix} This has kept mature cases for trial on hold for over two years, waiting to be scheduled for a session, which has been identified as a cause of delay in justice dispensation.^{lxxx} In 2022, after the conduct of 100 sessions and the determination of 696 cases, 1,267 cases concerning 1,858 accused persons in remand remained pending.^{lxxxi} Other than that, the use of sessions can delay the trial step with cases which have not been scheduled; the scheduling of sessions is plagued with financing, human resource and length challenges, which diminish their output.^{lxxxii}

Once the trial step has commenced, the law is generally silent on the time frame it should spend until finally determined, and the exception is only with economic cases, which are to be determined in 9 months.^{lxxxiii} The law champions and tasks the court with the expedient determination of economic cases.^{lxxxiv} It further limits the extension of the original life span by only 6 months.^{lxxxv} In this way, the law schedules the life span of an economic case to a total period of 15 months, well below the 24 months period, after which a case would be considered a backlog case.^{lxxxvi} However, compliance with such a lifespan length is wanting.^{lxxxvii} Noncompliance with the 15 months maximum lifespan can be attributed to the legal ability of the court to grant a further extension for an unlimited period.^{lxxxviii} As of November 2023, out of 81 pending cases, 28, equivalent to 34.56%, were backlog cases pending for over 24 months.^{lxxxix} Such a delay is partly a function of the legal permission to extend the lifespan endlessly which leads to multiple adjournments culpable for delaying cases and the logistical challenges that face the management of economic cases.

All other criminal cases have no legally scheduled lifespan for their determination. To address this, a practice has been adopted which requires cases to be determined in 24 months from the time they are commenced or otherwise be considered backlog cases.^{xc} This practice

requirement is used to gauge performance and plan resource allocation for purposes of backlog clearance and preventing the creation of backlog cases. However, the 24-months timeline is not for the trial step exclusively but rather the whole lifespan of the case. Moreover, it remains a mere practice with no legal force, and other than the use of administrative measures to ensure that cases do not overrun that period or stay pending afterwards, there are no legal sanctions for cases that go beyond that period. Consequently, backlog criminal cases remain an issue in the High Court.^{xci}

The control element during the trial step requires Judges to take an active role towards ensuring timely disposition of cases. This element can be exhibited through the control of adjournment. The law allows the trial step to be postponed or adjourned due to the absence of a witness or any reasonable ground to be recorded.^{xcii} Such reasonable grounds are subjective, and the law does not provide for length limitations for such postponement or adjournments. The absence of a limit in the number and length of adjournments can be attributed to the use of sessions to try original criminal cases. In effect, the length of any postponement or adjournment would be subject to the case either being scheduled in the same session or a future session as the registrar shall determine.^{xciii} As such, a postponement or adjournment of trial can easily range between a day and a year or more, a possibility detrimental to the timely justice dispensation quest. This possibility is not sufficiently cured by the power to order the accused's presentation from remand at any time or admit an accused to bail because the two powers are discretionary.^{xciv}

As far as witnesses are concerned, the court's control in the trial step is exhibited by its ability to summon witnesses' to appear in court, to take evidence in the absence of an accused and commission a magistrate to take evidence of a witness whose attendance may cause inordinate delay.^{xcv} The power to determine the matter by a ruling of no case to answer is yet another way the law affords the High Court control over proceedings before it so that they do not continue unnecessarily.^{xcvi} This helps to save time by not having the accused proceed with the defence case when an undefended prosecution case would still not warrant a conviction. The use of electronic or remote proceedings for purposes of examination of witnesses and the presentation of evidence is another tool in the court's arsenal.^{xcvii} These provisions embody the power of the court to shape the direction criminal cases are to take for their timely disposal.

However, unlike procedures before subordinate courts where the law provides sanctions for non-appearance, the High Court is not empowered to dismiss criminal cases when the prosecution fails to appear or present witnesses, regardless of the number of times the case has been postponed or adjourned.^{xcviii} This diminishes the court's ability to minimize the number of adjournments and allows the parties to control the trial's pace. Further, the lack of control over trials is aggravated by the fact that original criminal cases are tried by sessions, the availability of funds for that purpose, and that such sessions are also without 100% efficacy.^{xcix}

The trial step is a consequential phase in the lifespan of a criminal case. The law provides for the scrutinization element of case management system in the trial step by way of a case to answer ruling. However, it does not give an exact time when a trial ought to commence after the plea-taking and PH step is completed. Even though the law provides for a maximum 15-month lifespan for economic cases, allowed extensions for an unknown periods undercuts mandatory need for compliance. The same is further plagued by practical challenges which diminish the potency. For control, the law does not provide sanctions against non-compliance or delay tactics. As such, the law insufficiently provides for the essential element of case management in the trial step of criminal cases.

Hearing of Appeals, Revisions and Other Applications

The hearing for appeals, revision and other applications step is discussed separately from the trial step as the latter concerns the High Court's original criminal jurisdiction. In contrast, the instant step pertains to the appellate, revisional and incidental jurisdiction of the High Court. Appeals and applications for revision entail an approach made to the High Court for considering a decision of a subordinate court in its original, revisional or appellate jurisdiction.^c Other applications entail using the court's miscellaneous jurisdiction to determine matters related to a pending case like bail or illegal detention.^{ci}

The law is silent on the scrutinization of applications at the hearing step. With appeals, the law can be construed to provide for a secondary level of scrutinization, if not covered during the commencement step, at which point appeals can be summarily rejected for being unmeritorious, baseless, without sufficient grounds of complaint or that the trial evidence leave

no doubt as to guilt.^{cii} These limitations can be used at the hearing step to reduce the court's workload and facilitate timely justice dispensation. However, the application of these grounds for summary rejection is limited by case law. In the case of *Amani Mwangunule v. R*, the Court of Appeal expanded the import of section 364 (1) of the CPA such that where important or complicated questions of fact or law are involved, where the sentence is severe, or even when the grounds of appeal appear to have little merit, the court should not summarily reject the appeal but hear the same.^{ciii} This case law, which binds the High Court, could negate the legislative intention in section 364 (1) of the CPA and, by extension, section 28 (2) of the MCA. In this way, the precedent minimizes the potency of summary rejection as a tool of the scrutinization element of case management system to the detriment of timely dispensation of justice as unmeritorious cases would have to be entertained regardless.

With the scheduling of time and events element, though the law directs the court to issue notices of the time and place for the hearing, it does not schedule when the hearing of appeals or applications should start.^{civ} It also does not provide for their lifespan. Consequently, the start of appeals and applications are left to the discretion of the calendar of each judge and their lifespan to the practice of determining cases within 24 months to prevent the creation of backlog cases. This practice is subject to voluntary compliance and is not enforceable in law. As such, its ability to ensure timely dispensation of justice is diminished. For appeal and revisions, it can be argued that, the law does not provide for when this step should commence or how long it should last because its commencement is subject to the availability of the lower court's records for the case subject of appeal or revision. Since the law does not dictate when such records should be availed to the High Court, it cannot provide a strict commencement timeline. With the coming of electronic case management system (eCSM) as of 06th November, 2023, where case files are digitalized, this premise for non-provision of the commencement timeline becomes questionable.

The control element of case management system is provided for in the court's ability to issue a summary rejection order, as discussed.^{cv} Another way the element is covered during the hearing of the appeals is the court's power to dismiss an appeal or application for non-appearance or proceed *ex-parte*.^{cvi} The court could control unnecessary adjournment and facilitate swift determination by doing so. The control over the hearing of revision applications

is covered in the ability of the court to issue orders without hearing any of the parties save for when an order would prejudice the accused.^{cvii} This control reduces the court's workload, which enhances the chances of timely justice dispensation.

The hearing of appeals, revisions and other applications marks the point in their pendency, where the court can examine competing arguments. The law does not provide for the scrutinization of applications during this step and does so with appeals only by extrapolation. The law does not cover the question of when the hearing step should start and how long it should last. The court's ability to dismiss or proceed with an appeal or application hearing *ex parte* in case of nonattendance or decide an application for revision without having to hear the parties speaks to its control over adjournments.

Judgment

Judgment marks the final milestone in the determination of rights and liabilities.^{cviii} At this point, the court considers the cases brought before it, reviews the evidence and arguments produced, tests the two against the position of the law on the matter and synthesizes a reasoned decision.^{cxix} Being expected to produce a reasoned decision by considering the charge, evidence and arguments, the law places on the composing Judge an implied duty to scrutinize everything linked to the case. This includes the information, the evidence, arguments, relevant legislations and case law and applies one's mind as to what would be justice subject to the facts of an individual case.^{cx} Nothing in the law expressly provides for the scrutinization element of case management system at the judgment step, but what is required of a judgment sufficiently implies the duty. Failure to apply the law to the facts or show the court's consideration of the evidence has been a ground for the quashing of High Court judgments. In the case of *Muhidin Mohamed Lila @ Emolo & Others v Republic*, Criminal Appeal No 444 of 2015 (TZCA), the Court of Appeal nullified the judgment and proceedings of the High Court for the judgment did not show that the judge considered the presented evidence.^{cxii} In this way and by necessary implication, the scrutinization element of case management system is provided for by law.

'The quality of justice is subject to the time taken to get it'.^{cxiii} This opinion is equally valid for every step during the lifespan of a case as it is for the judgment step. While the case can be

hurried along through other steps, during the judgment step, when the Judge deliberates on the case, generally without further inputs from the parties, the time taken for completion of this step must be regulated to ensure timely justice. To this end, the law mandates that a judgment be delivered within 90 days of the trial or hearing completion.^{cxiii} Compliance with this 90-day rule and timely justice dispensation at large have been directly linked to a Judge's proper scrutinization of the case at issue, to the effect that the better the scrutinization, the easier the compliance and vice versa.^{cxiv}

The CPA does not provide sanctions for non-compliance with the 90-day rule, but the same is included as part of the competence and diligence principle, which makes its abrogation an ethical misconduct attracting disciplinary sanctions.^{cxv} These sanctions notwithstanding, cases that remain pending during the judgment step past 90 days are still a phenomenon to be contended with. Out of 717 cases pending in January 2022, 69 cases, equivalent to 8.8%, were pending for judgment for more than 90 days.^{cxvi} This number fluctuated throughout the year, and in February, 75 cases were pending for judgment above 90 days out of 855 cases.^{cxvii} This number of pending cases is meagre, but it nonetheless indicates non-compliance with the 90-day rule. While many reason can be given for such non-compliance, 216 of the 302 respondents, equivalent to 68.1% pointed to the improper management of cases as the major cause of delay.

No Judge has been disciplined for failure to comply with the 90-day rule, but there have been Judges who have had disciplinary proceedings commenced against them for non-compliance.^{cxviii} All such Judges, however, have at best only been warned and, in other instances, completed and issued most of the pending judgments before the appearance in the disciplinary committee.^{cxix} The latter instance exemplifies the rule's deterrent effect and its disciplinary sanctions. In this way, the law schedules time for the judgment step. It has sanctions in place for abrogation, which enhances the prompt completion of this step and further facilitates timely justice dispensation.

Finally, with the control element of case management system, not much is provided for by the law at the judgment step. Generally, a judgment should be read in the presence of the

accused.^{cxix} However, in the absence of one or more of the accused, the law allows reading the judgment in his or their absence to prevent undue delay in the disposal of the matter.^{cxxi} This affords the Judge control over unnecessary adjournments at the judgment stage.

Conclusion

The review examined the case management system in the High Court in so far as criminal justice is concerned. It focused on how the system functions to ensure timely dispensation of criminal justice. It analyzed the steps a criminal case undergoes during its pendency, testing the existence and adequacy of essential elements of case management. The review highlighted gaps in the law regarding the scrutinization of documents at the admission stage, leading to justice dispensation delays due to subsequent requirements of amendments and or dismissal of defective charges. Although administrative directives attempt to address this, they fail to ensure consistent application and sufficient legal force. While legally provided for and crucial for expediting cases, the plea-taking and PH step, faces challenges due to parties' reluctance to cooperate, undermining its effectiveness. Except in economic cases, the law's lack of specific timelines for this step contributes to inconsistencies and delays.

The trial phase is significant but lacks a mandated commencement time post-plea and PH step, leading to potential delays. Economic cases have a specified lifespan for resolution, but this is not consistently adhered to. The law's provision for scrutinization in the hearing of appeals, revisions and other applications step is limited by case law, and the scheduling of hearings is not specified, resulting in discretion-dependent timelines and potential delay. Further, although judgments ought to be delivered within 90 days post-trial, compliance varies, and delays still occur. Though the 90-days rule and its enforcement as an ethical standard has had a deterrent and expediting effect, it has not been 100% effective in ensuring that all judgments are delivered within the prescribed time period.

The discussion of the criminal justice case management system has revealed that the law does not provide for the elements in some steps, insufficiently does so in other steps and is plagued by practical challenges throughout, all of which synergistically defeat the pursuit for timely dispensation of criminal justice. To address this, amendments of the CPA, EOCCA and

Economic Crimes Division Rules are recommended so as to fully capture the essential elements of case management on every step a criminal case goes through. The amendments should focus on curbing any and all unnecessary adjournments, curing any delay caused by misuse of discretion and address as many circumstances as possible so that each scenario that presents itself in the pendency of a criminal case, novel or otherwise, can be remedied by the law. The mandatory use of session to try original criminal cases should be reviewed to see whether it remains necessary in the current age of information and communication technology advancement.

Apart from legal reform, the findings make improvement of criminal justice adjudication practice necessary. Training of Judges, state attorneys, advocates, other stakeholders in the criminal justice chain and the public at large on the essence of case management system and their respective roles can work to enhance the overall efficacy of the applied system. Further, the increase in the number of Judges, systematic and consistent enforcement of the law, improved budgetary allocation to cater for more sessions, if not done away with and increase in the capacity of stakeholders to complete their roles timely, for example the timely return of mental health examination results by the relevant authorities, can assist in ensuring the timely dispensation of criminal justice. Though plagued by bottlenecks which constrain its performance, case management system is a tool with great potential in ensuring the timely dispensation of criminal justice. Its potential is promising and is worth the necessary investment if the vision for timely and accessible justice for all is to be achieved.

Endnotes

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