The Quest to Upholding Independence of the Judiciary in Tanzania: An Appraisal of the Law and Practice

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Abstract

In this Paper an appraisal of the law and practice relating to Independence of the Judiciary in Tanzania is done. It is presented that the laws installing the doctrine of Independence of the Judiciary; the legal principles which safeguard and uphold it; challenges facing the implementation of the doctrine and finally a recommendation to take off from the challenges is offered. In the paper, it is maintained that the laws and legal principles purportedly crafted to install, safeguard and uphold the doctrine of Independence of the Judiciary are a mere sham. Such principles as those: that limit the involvement of the Executive arm of the government in the remuneration of the members of the judiciary; that are on the security of tenure of the judicial officers (judges); that relieve judicial officers from personal liabilities for actions and omissions arising in the course of their performance of duties, establishment and modus operandi of both the Judiciary Fund and the Judicial Service Commission and the doctrine of presumption of innocence, are all inadequate. The executive arm of the government through powers vested upon it and to be exercised over the Judiciary can still encroach upon the doctrine of Independence of the Judiciary. The powers to appointing and removal of the judges from office; appointment and removal of the Chief Justice by the President, funding of the Judiciary by the Executive; interests of the judiciary and the personal interests of the judges; the functioning of the Judicial Ethics Committees and the appointment of the Chief Court Administrator actually paralyse the Independence of the Judiciary in Tanzania.

In this Paper, it is argued, therefore that, though it is not expected for the doctrine to operate in the environment that supports it at a hundred per cent but the checks, if any, on the judiciary

ISSN 2455 2437
Volume 10 Issue 1 – January February 2024

should sparingly be done at least not to completely distort the essence of the existence of the doctrine itself.

Keywords: Independence of the Judiciary, Freedom of the Judiciary, the Judiciary of Tanzania, Executive encroachment on Judiciary

Meaning, Ingredients and the Scope of Independence of the Judiciary

Independence of the Judiciary is a doctrine which posits that administrators of justice in the course of their administration of justice should not be subject to any external improper influences; be it from individuals/public or institutions; be it direct or indirect and for any reason.[i] The phrase Independence of the Judiciary, therefore, connotes freedom of the judiciary in the execution of its function of the dispensation of justice on the basis of the facts, law and evidence before them. This function, is by the Constitution of the United Republic of Tanzania, 1977,[ii] vested upon the judicial arm of the government. On the need and the entails of the doctrine of independence of the judiciary, the high court of Tanzania once observed:

> the Judiciary is supposed to be an independent institution – … those who are entrusted by the Constitution to decide the rights and liabilities of guilt or innocence of people must be free from all kinds of pressures, regardless of the corners from which those pressures come. The Judiciary must be free from political, executive or emotional pressures …. It must not be subjected nor succumb to intimidation of any kind. [iii]

The said, therefore, illuminates that, the doctrine of judicial independence pre supposes three elements: separation of judicial powers and personnel from the executive and the legislature; security of tenure for judges and magistrates and the security of remuneration and security of judges from prosecution for works done in the course of executing their works.[iv]

Connecting to the foregoing, it should be remarked, however that, contrary to the popular perception, the freedom possessed by the judiciary for the purposes of the doctrine of Independence of the Judiciary does not mean that the judiciary should completely be free from

institutional attachment with all other government agencies such as the executive and the legislative arm of the government. In this manner, Independence of the Judiciary, will result in the collapse of the whole government system. The concept does not also mean a complete absence of regulation of the powers and the operations of the judiciary. This, again, would lead to the judiciary itself being a violator of the doctrine of Independence of the Judiciary. This is because as the popular saying goes, 'absolute powers corrupt but absolute powers corrupt absolutely'. The doctrine of Independence of the Judiciary, therefore, is only confined to the exercise of the principal function of the judiciary; the dispensation of justice. It is only through the interferences with this function that the doctrine of judicial independence is said to be encroached.

The doctrine of Judicial Independence generally is ascribed to Courts of law covering the Court of Appeal, the High Court, the Court of the Resident Magistrate, the District Court and the Primary Court. Furthermore, the concept of Independence of the judiciary is also conceived to extend and envelope the tribunals such as the District Land and Housing Tribunal and all the quasi-judicial bodies. Apart from the Court as institutions, the phrase 'Judicial Independence' also covers individual members of the bench including the judges and the magistrates as well as members of the bar; the advocates. Independence of the judiciary is sought from those who might attempt to suppress the mandates of the judiciary for their benefits and to the detriment of the individuals and weak ones influences or intimidation. In Tanzania, the doctrine was formerly installed in the Constitution in the year 2000.[v]

Essence of the Doctrine of Independence of the Judiciary

Independence of the judiciary is meant to enable the judiciary efficiently execute its functions. Being a body to dispense justice; the requirement to be free from all sorts of external interferences be it from the executive, legislature or any other agency of the government is indispensable. It has to dispense justice without fear of all sorts. The doctrine is meant to ensure that individuals and minorities do not fall victims of illegal and unjust treatment caused by the government or its top officials.

Non-observance of independence of the judiciary in the judicial systems of a country is fatal. It impacts in a negative way the whole justice system including the criminal justice, civil justice and even human rights justice systems. So, observance of independence of the judiciary in any country is, inevitable.

Installation and Upholding of the Doctrine of Independence of the judiciary in Tanzania

The inviolability of the doctrine of Independence of the judiciary in Tanzania fetches validity from various laws both national and international. They install the doctrine, endorse it and safeguard its application. The safeguarding is achieved through: limiting the involvement of executive authorities in the remuneration of the members of the judiciary; creating restrictions on the removal of judges, and, by relieve judges from personal liabilities for actions and omissions arising in the course of performance of their duties. Furthermore, the laws establish the Judiciary Fund, the Judicial Service Commission and they also uphold the doctrine by imposing another doctrine known as the doctrine of presumption of innocence.

Most of the highlighted ways that install, endorse and safeguard the doctrine of Independence of the judiciary are done by the Constitution of the United Republic of Tanzania, 1977.[vi] Being the supreme law of the land, the Constitution foresees a Judiciary which is independent and dispenses justice without fear or favour.[vii] It further directs courts of law when exercising the powers of dispensing justice, to have freedom and only to observe the provisions of the Constitution and those of the laws of the land.[viii] All other factors and influences outside the range of the Constitution and other laws should not feature in designing courts' decisions.

In the Constitution, there are also other several provisions which either directly or indirectly validate the application of the doctrine of Independence of the judiciary in Tanzania. One of such provisions includes the one which vests upon the Courts of law, the ultimate mandate on matters of the dispensation of justice. The relevant provision states that 'the Judiciary shall be the authority with final decision in the dispensation of justice in the United Republic of Tanzania.'[ix] Furthermore, and in this connection, the Constitution also directs the Court, in the course of delivering their criminal and civil decisions, to observe the principles of impartiality

and without due regard for one's social or economic status.[x] These provisions too serve to dissociate influences of external forces in courts' decision-making. The constitutional principles of presumption of innocence which is to the effect that no person charged with a criminal offence shall be treated as guilty of the offence until proved guilty of that offence also serves to uphold the doctrine of judicial independence.[xi]

Another provision which suggests the prevalence of independence of the judiciary in Tanzania is the constitutionally provided restrictions on the removal of the judges. They state the procedure through which a judge can be removed from his position. The President, according to this procedure, when want to remove a judge, has to appoint a special tribunal composed of judges of High Court or justices of appeal within the commonwealth countries who shall probe the allegations facing the judge and depending on the nature and severity of the allegations recommend for the removal of such judge.[xii] The purpose of this restriction is to make judges execute their duties without fear of being removed from offices. In addition to that, Judges are also privileged and protected from suits for acts done or omitted to be done by them in good faith in the execution of their judicial duties.[xiii]

Other ambition to facilitate the safeguarding of the doctrine of independence of the judiciary in the Tanzanian constitution is noticeable in its creation of the Judicial Service Commission. This is a sort of an agency established by the constitution[xiv] whose functions, among others, are to: recruit, appoint, confirm and promote judicial officers; deal with judicial officers' discipline, remove them and also to determine rate of salaries to be paid to the judicial officers.[xv] The Judicial Service Commission sometimes works through *ad-hoc* committee.[xvi]

The other notable endeavors that foster the doctrine of the independence of the judiciary are from the statutes; they include the establishment of Judiciary Fund and vesting of some authorities on the Judicial Service Commission over certain judicial officers. The Judiciary Fund is established by the Judicial Administration Act, 2011.[xvii] It serves as a pool into which the money from the treasury and other sources is deposited for the judiciary's use such as salaries of the judges and other services.[xviii] The other statutory recognised exertions in the Judicial Administration Act, as hinted, is its mandating of the Judicial Service Commission to appoint, determine tenure of office, discipline and terminate service of judicial officers described as

Principal Magistrate, Senior Magistrate, Magistrate, Judge's Assistant and the Court Administrators.[xix] The establishment of the Judiciary Fund and the vesting of powers over the Judicial Service Commission represent the spirit to upholding the independence of the Judiciary in the country.

In addition to the constitutional and statutorily devised gears to upholding the doctrine of the independence of the judiciary at domestic level, case laws and strategic plans are also worth noting. The case laws namely 'Hamisi Masisi and Six Others v. the Republic'[xx] AND ALSO REPUBLIC V. Iddi Mtegule,[xxi] are such relevant authorities. In Masisi's case, the High Court while exercising its revisionary jurisdiction over a decision by the Court of the Resident Magistrate of Musoma remarked that Courts should neither make decisions on expediency nor on any irrelevant pressures but only in accordance with the constitution, other laws and in defence of the people and the practices of the Republic. Triggering the High Court's reaction toward the Resident Magistrates' Court (court subordinate to the high court) was the magistrate's cancellation of bail, order re-arrest and consequently return to custody of the accused person who were earlier released on bail by the same court and the same magistrate. The magistrate's act canceling his earlier order was caused by the high handedness of the executive's official (Regional Commissioner-RC) on the court processes as exhibited by his reactions, pressures and intimidations toward the court for the accused person's release on bail. In the Mtegule's case cited earlier the High Court echoed the constitutional position regarding independence of the judiciary in Tanzania by re-stating that the Judiciary is supposed to be an independent institution. In this case, the High Court was reacting to the Mpwapwa Area Commissioner's conduct of writing an accusation later to the Primary Court Magistrate alleging that by acquitting a person who was facing charges of disobeying his lawful order banning selling of bans to avoid spread of cholera, was thwarting authorities' efforts to deal with the malignant decease. The saga awakened the district court magistrate, acting under revisionary authority to quash the trial court's decision and ordered re trial of the case. In the high court, the accused was also acquitted as correctly reasoned by the trial court, that bans were not among the items banned in the Commissioner's order.

As part of the domestic mechanisms, strategic plans, as hinted earlier in the preceding part, are also relevant in reinvigorating the doctrine of the independence of the judiciary. Relevant in

the context is the Judiciary Strategic Plan of 2020/21 - 2024/25. This categorically identifies safeguarding of the independence of the Judiciary as the core values of the judiciary.[xxii]

Besides the domestic framework devised in Tanzania to safeguard the independence of the judiciary, international framework comprising of the global UN and the African regional instruments also embody the doctrine of independence of the judiciary. It is because of her membership to the international community that, Tanzania, owe an obligation to obey and implement such instruments. The International Covenant on the Civil and Political Rights, 1966; the Convention on the Rights of the Child, 1989; the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 1990; and, the international convention for the protection of all persons from enforced disappearance, 2010, carry a theme of the independence of the judiciary; they state that when faced with charges or legal proceedings, the subjects of the named laws, are to benefit from fair and public hearing or trial before a competent, independent and impartial court, tribunal or any relevant authority established by the laws for that purpose.[xxiii] The African Charter on Human and People's Rights, 1986 and the African Charter on the Rights and Welfare of the Child, 1999 on their part, in respect to independence of the judiciary vest the duty to guarantee the independence of the courts upon the state parties to it. [xxiv]

Further, other UN and African non-binding but influential guidelines on the independence of the judiciary include the Universal Declaration of Human Rights, 1948, the Basic Principles on the Independence of the Judiciary;[xxv] the Basic Principles on the Role of Lawyers;[xxvi] the Guidelines on the Role of Prosecutors;[xxvii] and, the African Union Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa,[xxviii] also in their totality are to the effect that everyone facing charges against them are entitled to a fair and public hearing by an independent and impartial tribunal.[xxix]

Independence of the Judiciary and the Emerging Challenges

Despite the constitutional and statutory appraised achievements regarding safeguarding of the doctrine of independence of the judiciary in Tanzania, still, the respect and practice of the same

has been a subject of discussion. A scrutiny of the law that installs and safeguards the doctrine of independence of the judiciary on the judiciary and the practice of the same in Tanzania rises queries as to whether the judiciary is really endowed with the independence it deserves and as it is impressed upon the public to believe. This assertion is grounded on the existence of impediments of various sorts which challenge the efficient operation of the doctrine. The most and direct noticeable challenge is the interference from officials of the executive arm of government. They may be viewed as sourced from the following aspects: The appointment and removal of judges from office; appointment and removal of the Chief Justice by the President; funding of the judiciary by the executive; interests of the judiciary and the personal interests of the judges;[xxx] the composition and functioning of the Judicial Ethics Committees, and lastly in this context, the appointment of the Chief Court Administrator. All these in their totality, impact the practice of the doctrine of independence of the judiciary in Tanzania.

The Appointment and Removal of Judges from Office

Both the government and the ruling political party play a vital and decisive role in determining who manages various positions in the judiciary.[xxxi] The appointment of the top administration of the judiciary is made by the President, of course, in consultation with the Judicial Service Commission.[xxxii] It should be noted that the President who is the head of the executive arm of the government is often times also the chairman of the ruling political party, presently *Chama cha Mapinduzi (CCM*). This, therefore, means that the appointment of judicial officers including justices of the Court of Appeal and judges of the High Court by the President may be influenced by both the executive arm of government and the ruling political party's sentiments. When judges are appointed based on specific considerations such as affiliations to political parties or loyalty to the executive then such appointed administrators of justice are not expected to be neutral when it comes to matters of interest to the government and the ruling party in particular. In this connection, it is also very likely that the credibility of the Court may be lowered. This is because 'justice should not only be done but should be seen to have been done'. Even if the appointed judge who ascends from the political party decides on a certain matter on merits but just because he has connections with the ruling political party or the executive arm of government, then the trust of the subjects of law on his decisions will greatly be reduced.

The worries connected to the appointment of judges equally applies to the removal of judges from their positions. The constitutional safeguard of the tenure of office of the judges after they are appointed which is said to be for guaranteeing independence of the judiciary is itself not very helpful. Though the President cannot himself remove a judge without first forming an investigative tribunal of the justices of the Courts from the common wealth countries to conduct an enquiry and submit a report to him with recommendations to such effect,[xxxiii] but still, the safeguard does not guarantee complete independence to the judges and consequently to the judiciary. This is because there are powers reserved to the President pending the formation of the tribunal and reception of their report. He can suspend the judge;[xxxiv] this is itself a punishment to a judge. Furthermore, the president has unrestricted powers to transfer or reassign a judge with other responsibilities even out of the judiciary. Though the affected judge will retain his title as a judge but in reality, they have been snatched with the judiciary powers. Examples in this case are the judges such as her ladyship Julie Manning who was appointed Minister for justice in 1975 and his Lordship Yona Mwakasendo who was appointed Chief Corporation Counsel of the Tanganyika Legal Corporation (TLS) in 1976.[xxxv] Transfer or reassignment of a judge in the manner herein explained is an embarrassment to the judge that no one would love to experience.

Appointment and Removal of the Chief Justice by the President

The position of the Chief Justice is established by the Constitution of the United Republic of Tanzania.[xxxvi] He is the overall head of the judiciary in Tanzania. Being the head of the judiciary, he represents the image, authority and power of the judiciary, like the speaker represents that of the legislature and the President represents that of the executive. In theory therefore these three figures should be at par though operate separately with no one having an upper hand over the other. The Chief Justice, is thus, the link to the executive and the custodian of the doctrine of independence of the judiciary in the country.

The Constitution vests powers of appointment of the Chief Justice upon the President.[xxxvii] The President is also empowered to remove the Chief Justice from office.[xxxviii] It is the view of this paper that these powers, the powers of appointment and removal of the Chief Justice from the

office by the President greatly injure the enjoyment of the independence of the judiciary by the judiciary and the Chief Justice as an individual.

Vesting the powers of appointment and removal of the Chief Justice by the President implies that the Chief Justice enjoys his position only at the pleasure of the President. This subordinates the Chief Justice and the judiciary to an inferior position. This in turn diminishes the independence of the Chief Justice individually and the judiciary as an institution. Though in determine an issue whether the provision of the constitution on the tenure of the chief justice impede the realisation of the independence of judiciary the court opined that the combined effect of articles 110A and 120A (1) of the Constitution is to safeguard the doctrine and that methodology of appointment, tenure and removal of the Chief Justices is a matter that is widely acknowledged by the comity of nations,[xxxix] it is still maintained in this paper, that, the safeguard is not sufficient. This is because the President's power of removal may be abused and arbitrarily used to intimidate the Chief Justice. This, in turn, may compromise their image, power and authority. Worse still, the powers of removal are vested in the President even without stipulating the grounds and procedures for the exercise of such powers. The procedure of removal of the judge as provided in the laws do not cover the Chief Justice.[xl] The powers of removal as vested to the President, may, thus be misused to unfairly remove the Chief Justice; also, the fear of removal from position is likely to affect the workings of the Chief Justice. He may compromise with the basic judiciary principles and demands just to please the appointing authority.

Funding of the Judiciary by the Executive Arm of Government

Another challenge on the Independence of the judiciary is the influence resulting from the financial and funding roles of the executive arm of government to the judiciary. Though it is clear that the salaries of the judges are derived from the judiciary fund established by the Judicial Administration Act, 2011 but the reality is that the main financier of the judiciary is the government through the treasury.[xli] Worse still the President has a high hand on this. He is empowered to determine the amount of salaries, and remuneration and terminal benefits of the judicial officers; the Judicial Service Commission's work is only to advise the appointing authority.[xlii] Because of this connection, thus, the executive's, influence in the Court's affairs

is obvious. It is not once that the government interfered with the independence of the judiciary on these grounds. It can be recalled that at one time the President of the United Republic of Tanzania who is the head of the executive addressing the congregation in the 2017's law day celebrations in Dar es Salaam openly demanded the judiciary to seriously deal with tax evaders so that the government can get funds which can be allocated to the judiciary.[xliii] With no doubt, this kind of interference on the judiciary and its official create fears on its part, the pertinent worry being that of losing funds if the directives are not complied with.

Reasons Connected to the Interests of the Judiciary

Interest of the Judiciary and its necessary connections with the executive arm of the government is also an impediment to the full enjoyment of the independence by the judiciary in Tanzania. This proceeds from the logic that the judiciary is an arm of government; together with the executive they are therefore the tools of government that facilitate the achievement of the interests of the ruling political party which is the guardian of the interests of the State. So, by this insight, the notion of the independence of the judiciary is just a sham to let things roll on. The judiciary can never seek independence at the detriment of the executive; it is part of the government and therefore it is the government itself. Its objective is to protect the interest of the government which is its own interest also. In the long run they all protect the interests of the state. The genuine interest of the people can never override the interest of the state.

Personal Interests of the Judicial Officers

Personal interests of the judicial officers such as judges also impinge on the independence of the judiciary in general and the High Court in particular. The untold story is about the strength of the individualist and personal goals of the judges such as the hope for power. Judges are human beings and human beings are egocentric in nature; they are self-centered. Every individual judge with no doubt must be filled with hopes and aspirations such as aspirations for a good position and promotion from the presently held position. In the judiciary and for the case of judges of the High Court, the aspired positions may include being elevated into the position of the in-charge of the station; being appointed a Principal Judge; Justice of Appeal or Chief Justice. In all these promotional positions the President is the key responsible stakeholder. The manner any judge upholds the interests of the President personally; interests

of the executive and the ruling party's interest obviously may have influence on the realisation of the judge's hopes and aspirations. All of these are likely to affect the independence of the judge and consequently independence of the judiciary in the determination of cases considered of interest to the appointing authority and or its associates.

Furthermore, in practice, the executive officials at several times have been witnessed to give directives to the judiciary or judicial officers. At times they have even assumed judicial powers themselves thereby adjudicating on matters which either are pending before Courts of law or which have been already finalised.[xliv]

The Composition and Functioning of the Judicial Ethics Committees

For the proper management of the ethics and professional etiquette of the judicial officers, the judicial ethics committees are put in place. The relevant ones in the present context are the Regional Judicial Officers Ethics Committees and the District Judicial Officers Ethics Committees. They work at both the regional and district levels respectively.

The problem with hereinabove named judicial ethics committees in so far as the independence of the judiciary is concerned is their composition. The Regional Judicial Officers Ethics Committee is composed of the Regional Commissioner (RC), the Resident Magistrate in charge, the Regional Administrative Secretary (RAS), two members appointed by the Regional Commissioner and other two judicial officers appointed by the judge in charge.[xlv] While the RC is specifically identified to act as the chairperson the secretary can be either the State attorney in charge or the Regional Administrative Secretary.[xlvi] The Coram in all the meetings of the Regional Judicial Officers Ethics Committee is met when there is a chairperson and other three members.[xlvii] The District Judicial Officers Ethics Committee on its part is composed of the District Commissioner, the District or Resident Magistrate in charge, the District Administrative Secretary, two appointees of the District Commissioner and two judicial officers appointed by the judge in charge.[xlviii] The Coram is observed when there is the chairperson and three other members.[xlix]

The composition of the regional Judicial Officers Ethics Committee and the District Judicial Officers Ethics Committee is a problem because they are dominated by non-lawyers and lack

proper representation of legal personnel. The likelihood of its failure to uphold the concept of independence of the judiciary is, therefore, great. Matters of independence of the judiciary are usually within the domains of the law. Lawyers are, therefore, expected to perform better in this aspect than laypersons.

In connection to the aforesaid, and which, in this context, is considered an encroachment of the independence of the judiciary in the country, is the subordination of the District Judicial Officers Ethics Committee disciplinary authority over the Primary Court Magistrates, to the Minister. He (the Minister) is empowered to direct the Committee to perform any function.[l] This, the minister's power may include direction that may interfere with the independence of the judiciary.

The Chief Court Administrator- Appointment and Functions

Yet another aspect which seemingly is an encroachment to independence of the judiciary in Tanzania is related to the appointment of the Chief Court Administrator and his administration of the judiciary. The position of the Chief Court Administrator is a statutory one.[li] He works as the head of the general administration of the judiciary,[lii] the overall administrator of the judiciary fund[liii] and all the justice service delivery projects are under his authority.[liv] The Chief Court Administrator is thus the Chief Executive Officer (CEO) of the judiciary services.[lv] This CEO of the judiciary is appointed by the President and among the requirements qualifications for the position possession of legal knowledge is not mandatory.[lvi] He holds office on such terms and conditions as the President shall determine.[lvii] The disciplinary authority of the Chief Court Administrator is also the President.[lviii]

It is viewed in the context of this discourse that; the Chief Court Administrator's appointment and administration of the judiciary is likely to affect the independence of the judiciary. The problem rises in two different ways: one, his lack of legal qualification may result in the deliberate or accidental neglect of the principles safeguarding the concept of judicial independence, and, two, as an appointee of the President, in the execution of duties may compromise with the principles of the independence of the judiciary for the interests of the President and the executive generally. It should be known that the executive arm of government and its officials are the top violators of the doctrine of independence of judiciary in Tanzania.

The President being the disciplinary authority over the Chief Court Administrator is also not healthy for the judicial independence.

Conclusion and Recommendations

In this Paper, the independence of judiciary in Tanzania is discussed. Laws mounting the doctrine are explained and its rationale made clear. Furthermore, issues that hinder the perfect practice of independence of the judiciary in Tanzania are also revealed and discussed; some are legal, some are institutional and some are personal.

Despite all the hurdles in attaining judicial independence, however, the view expressed in this paper is that it is possible to attain the same in Tanzania. A call is made, thus, that the judiciary must be allowed to work in a manner that no influences or fear from outside the law affect its decision-making functions. There are aspects which when dropped and better ones adopted the doctrine of independence of the judiciary will make sense. They include improving the process of appointment of judges by snatching powers of appointment from the President. The judges can just be obtained through processes independently administered by the Judicial Service Commission. Vacant positions can be advertised qualified people apply, appear before interview panel and consequently nominated by any authority, even if it is the President of the country. The same process can also be adopted for the Chief Justice and the Chief Court Administrator. In addition, the Chief Court Administrator should be appointed among the legal fraternity and his disciplinary authority need be re designed. As for the judges, it is opined that the President of the country as a member of the executive should not have a hand in the appointment of the tribunal for their removal.

On the issue of funding, it is recommended that to rectify the problems accruing from insufficient funds of the judiciary and the same being used to manipulate the functions of the judiciary, the law should specifically apportion a certain percentage of the state annual income to be disbursed into the Judiciary fund. This is not alien as the same principle is used by the government to disburse up to not more than 2 % of its annual recurrent budget as a grant to the political parties.[lix]

Furthermore, in respect to the judicial ethics committees, it is also advised that, both, the Regional Judicial Officers Ethics Committees and the District Judicial Officers Ethics Committees should not be dominated by the members from the executive arm of government but members from the legal fraternity. The powers of the Minister responsible for justice to direct the District Judicial Officer's Ethics Committees on matters concerning discipline of Primary Court magistrates should also be stopped, this is not healthy for the flourishment of independence of the judiciary in the country.

Generally, however, to attain independence of the judiciary at its best it is opined that the government officials especially members of the executive must be aware of their limits and essence of the doctrine of independence of the judiciary itself. Considering the importance of the doctrine of independence of judiciary it is hoped that if all the recommendations are effected then the judiciary is set to attain high-level efficiency in the dispensation of justice; the task that is entrusted upon it by the Constitution of the United Republic of Tanzania, 1977.

[i] Maina, C.P., Human Rights in Tanzania: Selected Cases and Materials, Rudiger Koppe, 1997, p. 482.
[ii] Art. 107A (1).
[iii] Republic v. Iddi Mtegule, PC-Criminal Revision No. 1 of 1979, High Court of Tanzania at Dodoma, unreported (as quoted from Maina, C.P., Human Rights in Tanzania: Selected Cases and Materials, Rudiger Koppe, 1997, p. 500 - 501).
[iv] Nyalali, F.L., Independence of the Judiciary in Tanzania, Vol. 15, Eastern Africa Review (EALR), p. 66-87, 1982.
[v] Vide the 13th amendment of the of the Constitution of the United Republic of Tanzania, 1977 Act (Act No.3 of 2000).
[vi] Cap. 2 of the laws of Tanzania.
[vii] The Constitution of the United Republic of Tanzania, 1977, para 2 of the Preamble.
[viii] The Constitution of the United Republic of Tanzania, 1977, art 107B.
[ix] See The Constitution of the United Republic of Tanzania, 1977, art 107A (1).
[x] The Constitution of the United Republic of Tanzania, 1977, art 107A (2) (a).
[xi] The Constitution of the United Republic of Tanzania, 1977, art 13 (6) (b).
[xii] The Constitution of the United Republic of Tanzania, 1977, art 110A (1)-(6).
[xiii] The Judicial Administration Act, 2011, s 19.
[xiv] Constitution of the United Republic of Tanzania, 1977, art 112.
[xv] The Constitution of the United Republic of Tanzania, 1977, art 113; The Judicial Administration Act, 2011, s 29(1) (a)-(e) and also the Judiciary Administration (General) Regulations, 2021, GN. 1 of 2021, reg 5 (1) (b) and (c) reg 5 (2) and 27 (1) and (2).
[xvi] The Judiciary Administration (General) Regulations, 2021, GN. 1 of 2021, reg. 18(1)-(3).
[xvii] Judiciary Administration Act, Act No. 4 of 2011, s 52 (1).
[xviii] The Judicial Administration Act, 2011, s 52 (2).
[xix] Judiciary Administration Act, Act No. 4 of 2011, s 34 and 35.
[xx] (1985) TLR 24.

[xxi] PC-Criminal Revision No. 1 of 1979, High Court of Tanzania at Dodoma, unreported (as quoted from Maina, C.P., Human Rights in Tanzania: Selected Cases and Materials, Rudiger Koppe, 1997, p. 500).
[xxii] See the Judiciary of Tanzania, Judiciary Strategic Plan 2020/21 - 2024/25, July 2020.
[xxiii] See International Covenant on the Civil and Political Rights, 1966, art. 14(1); Convention on the Rights of the Child, 1989, art. 37(d); International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 1990, art. 18 (1); and, International Convention for the Protection of All Persons from Enforced Disappearance, 2010, art.11 (3).
[xxiv] See African Charter on Human and People's Rights, 1986, art. 26 and African Charter on the Rights and Welfare of the Child, 1999, art. 17 (2) (c) (iv).
[xxv] Adopted by the 7th UN Congress on the prevention of crimes and treatment of offenders, Milan, 26 August - 6th September 1985, and endorsed by UNGA res 40/32 in 1985.
[xxvi] Adopted by the 8th UN Congress on the prevention of crimes and treatment of offenders, Havana-Cuba, 27 August to 7 September, 1990
[xxvii] Adopted by the 8th UN Congress on the prevention of crimes and treatment of offenders, Havana-Cuba, 27 August to 7 September, 1990
[xxviii] Adopted as part of the African commission's activity report at 2nd summit and meeting of heads of states of African union, Maputo, 4-12 July 2003.
[xxix] See Universal Declaration of Human Rights, 1948, art. 10.
[xxx]The Constitution of the United Republic of Tanzania, 1977, art 109 (8).
[xxxi]Peter, C.M. and Wambali, M.K.B., ''Independence of the Judiciary in Tanzania: A Critique'', 21 (1), *Verfassung Und Recht in Ubersee/Law and Politics in Africa, Asia and Latin America*, (1 Quartal 1988), p. 76, available at: https:/www.jstor.org/stable/43109730, accessed 25th May 2020.
[xxxii]The Constitution of the United Republic of Tanzania, 1977, art 109 (8).
[xxxiii]The Constitution of the United Republic of Tanzania, 1977, art 110A (2), (3) (a), (b), (c), (4) and (5).
[xxxiv]The Constitution of the United Republic of Tanzania, 1977, art 110A (3) (a).
[xxxv]Peter, C.M. and Wambali, M.K.B., ''Independence of the Judiciary in Tanzania: A Critique'', 21 (1), *Verfassung Und Recht in Ubersee/Law and Politics in Africa, Asia and Latin America*, (1 Quartal 1988), p. 77, available at: https:/www.jstor.org/stable/43109730, accessed 25th May 2020.
[xxxvi] The Constitution of the United Republic of Tanzania, 1977, art 108(1).
[xxxvii] The Constitution of the United Republic of Tanzania, 1977, art 118 (2).
[xxxviii] The Constitution of the United Republic of Tanzania, 1977, art 118 (2) (c).
[xxxix] In the matter of challenging the power of the President to remove the Chief Justice from his post between Paul Emmanuel Kilasa Kisabo and the Attorney General, Miscellaneous Cause No. 09 of 2022, High Court of the United Republic of Tanzania, p. 28, unreported.
[xl] See the Judicial Administration Act, 2011, s 35 (1).
[xli] The Judicial Administration Act, 2011, s 52 (2).
[xlii] The Judicial Administration Act, 2011, s 32 and 29 (1) (v).
[xliii] President John Magufuli (the late) addressing the 2017's law day's celebrations at Dar es Salaam, Tanzania.
[xliv]See Hamisi Masisi and Six Others v. the Republic (1985) TLR 24. Recall also the late President John Pombe Magufuli's speech at the Law Day directing the Chief Justice (the Judiciary) to punish the tax evaders so that he can get money to allocate to the Judiciary.
[xlv] The Judicial Administration Act, 2011, s 50 (a)-(e).
[xlvi] The Judicial Administration Act, 2011, s 50 (3) (a) and (b).
[xlvii] The Judicial Administration Act, 2011, s 50 (6).
[xlviii] The Judicial Administration Act, 2011, s 51(1) (a)-(e).
[xlix] The Judicial Administration Act, 2011, s 51(2).
[l] The Judicial Administration Act, 2011, s 51(3).
[li] The Judicial Administration Act, 2011, 2011, s 7 (1).
[lii] The Judicial Administration Act, 2011, 2011, s 7 (4).
[liii] The Judicial Administration Act, 2011, s 52 (3).
[liv] United Republic of Tanzania, the Judiciary of Tanzania, Environmental and Social Management Framework for Citizen-Centric Judiciary Modenisation and Justice Delivery Project, 2015, p. v.
[lv]The Judiciary Administration (General) Regulations, 2021, GN. 1 of 2021, reg 4 (1).
[lvi] The Judicial Administration Act, 2011, s 7(3) (a), (b) and (c).
[lvii] The Judicial Administration Act, 2011, s 7(6).
[lviii] The Judicial Administration Act, 2011, 2011, s 9.

[lix] The Political Parties Act, Cap. 258 R: E 2019, s 16 (1).