



The Tanganyika Law Society

The Bar Association Of Tanzania Mainland

From: TLS President's Desk

To: TLS Members

Date: 16th May 2018,

Dear Valued Members,

RE: FEEDBACK ON THE COURT OF APPEAL OF TANZANIA (CAT) POST SESSION MEETING WHICH WAS CONDUCTED ON 11th MAY 2018.

I am writing to you with regard to the Court of Appeal ("CAT") Post Session Meeting held at the Court Appeal premises in Dar es Salaam, to which the President of the TLS is an invitee. During the said meeting, chaired by Hon. M. Kipenka JA, the Judiciary *made inter alia* the following observations with respect to the conduct of the sessions held from 16th April 2018 to 11th May 2018.

- Advocates were responsible for adjournments in cases during the session due to illness, failure to serve written submissions on opponents and non-attendance due to traffic jams;
- The CAT has asked us to inform our membership that when ill, we should try to ensure that the person who holds brief can proceed with the matter particularly in the case where the case is conducted by an advocate who is from a law firm;
- The CAT has stated that it is prone to be lenient with advocates and they would appreciate if this leniency were not abused;
- The AG representative's comments was that when we are asked for comments on bills, we send to the AG individual emails as opposed to a statement by the Secretariat consolidating all the members' views as representative of the TLS views.

During the said Post Session Meeting I also took the opportunity to raise matters which were of concern to the Bar as set out below:-

A. Dock brief fees.

I lamented that the fee of TZS 100,000= for Dock Briefs is not sufficient and is a fee that is neither fair on the advocate for it is not commensurate with the work that the advocate is required to undertake, nor is it fair on the accused who is represented by an underfunded advocate. The Chairman was sympathetic and suggested that the matter could be considered by the CAT Rules Committee, which he chairs. He informed me that presently the Rules Committee are reviewing some rules, which Hon. Kahyoza DR will

send to the Bar for comments and we should use the opportunity to recommend fee increases.

B. Late Service of Submissions by the AG on Advocates.

I informed the CAT that the AG Chambers is notorious for serving their submissions late on advocates thereby contributing to unfairness and in some instances delays. The AG's representative informed me that he will take this matter up with Chambers;

C. Illness

I informed the CAT that some cases are extremely complex and if an advocate takes ill, it is very difficult for another advocate to take on the case without sufficient time to study the case closely and that is why illness as an excuse for adjournment should be accepted by the CAT. After the meeting I went further and calculated the percentage of cases adjourned during the 16 April to 11 May Session due to Counsel's illness. They were 2 cases out of 77 which were adjourned due to illness of counsel and this amounted to 2.5% of the cases, which I personally think is not a statistic for which we should be overly concerned. I will raise the statistics on illness at the next CAT Post Session Meeting in our defence.

D. Abuse of Power by the DPP

I brought up the membership's concern about the manner in which the DPP abuses his power with respect to non-bailable offences and the delay in prosecuting cases where bail has been denied. I expressed my concern that the DPP's conduct is leading him on a collision course with the Bar, which will have no winners. The CAT informed me that I should raise this at the National Case Flow Management Committee on which the President of the TLS is a permanent member.

My views, commitments and actions as a result of the Post Session Meeting:

a. Adjournments due to non-service of documents and other reasons by Counsel

I calculated the percentage of the cases that were adjourned in the last CAT Session as a result of non-service of documents and other reasons by Counsel and it is 6.5% of the total cases. It is not difficult for us as members to do everything within our power to ensure that this statistic is lowered to 0%. I would like to bring to your attention a personal complaint from Hon. M Kipenka JA who informed me that during one hearing when seeking an adjournment an advocate appeared without a file. I think that it is essential that even when we seek adjournments we should look professional and do so in a professional manner because this one adjournment has left a bad taste and it is what is remembered by the judges.

b. Comments on Bills

I really do recommend that a consolidation by the Secretariat of the individual views of members under the umbrella of the TLS would be the best way to solve the AG's complaint. Our role of advising on bills is essential and we must guard it jealously. I therefore, thank all the members who take their time to contribute their views and I encourage all members to use this right to advance the rule of law in Tanzania.

- c. Discussions with the DPP's Representative
Immediately after the CAT Post Session Meeting I discussed the members' concerns regarding the DPP's abuse of power with the DPP's representative who informed me that he would bring these concerns to the attention of the DPP and he suggested that I raised these concerns in a meeting with the DPP.
- d. Discussions with the Principal Judge of the High Court's Registrar
Immediately after the CAT Post Session Meeting I paid the Registrar of the Principal Judge a visit in order to enquire about the National Case Flow Management Committee. I was informed that Hon. Mgeta J was the secretary responsible for this Committee when he was Registrar. Given his recent promotion we have been advised to write to the Principal Judge to seek a meeting of this Committee.

Way Forward:

I have instructed the Secretariat to do as follows:

- A. Secretariat to prepare letter from President to membership on the outcome of the CAT Post Session Committee Meeting with relevant recommendations as a result of the requests made by the CAT.
- B. Secretariat to conclude research on quantity of accused persons held in remand and how long their cases have been pending;
- C. Secretariat to research the last time the National Case Flow Management Committee sat with a view to seeking the said Committee to sit as soon as possible.
- D. Secretariat to prepare letter from President to membership on the outcome of the CAT Post Session Committee Meeting with relevant recommendations as a result of the requests made by the CAT.
- E. Secretariat to seek courtesy call meetings for the Governing Council with various authorities commencing with the CJ, then the JK, AG, Minister of Justice and DPP and of course the Speaker of Parliament.

Kind regards,



Fatma A. Karume
TLS President