

Challenges and Opportunities in Recent Legal Development that Affect Legal Profession in Tanzania.

By Albert G. Msando, Advocate.

1.0 Introduction

Reflecting on challenges and opportunities in recent legal developments affecting the legal profession lands us on an overused but least understood phrase, "*commercial awareness*". The term implies an understanding of the world you, your clients, and everybody else is living in. It takes more than knowing the law. Fascinating as it can be, the law is a poor lens for understanding the world at large.

Commercial awareness involves politics, business, history, economics and technology. But it also involves understanding people from all walks of life, with all sorts of problems, and how they think and feel. Advising a small business owner, for instance, requires understanding the market and the state of their industry, but also their emotional connection to their business.

2.0 Recent Legal Developments in Tanzania

What world are we living in today in Tanzania? Is it any different from yesterday? We are all aware that law is evolving with time; it does not standstill. Now and then, new laws are passed, and recent judgments are entered. The reasons for amendment or passing of new laws are various. The impacts are both positive (opportunities) and negative (challenges) for lawyers.

The title of the topic was crafted and passed on to me by the Secretariat. It may sound like limiting the focus of my presentation on recent legal developments affecting the legal profession. However, it will not serve my presentation's purpose if I turn a blind eye to other developments, which are not legal but are causative or triggering factors of the legal developments.

These developments are political, economic and social. It will not be possible to discuss all of them in this presentation, but a mention here and there will serve the purpose and pave the way for future discussions and reflections. For the sake of time and avoidance of being repetitive of what is already common knowledge to many of us, I will highlight the challenges and stress on lawyers' opportunities.

2.1 Challenges Facing the Legal Profession

Challenges facing the legal profession today are political, economic, legal and social. They are also historical and structural. Efforts to extinguish them are one thing; traversing through or around them is another thing for lawyers. Lawyers should do both, make efforts to extinguish the challenges and circumvent them to survive.

2.1.1 Restrictive Laws and Regulation

Recently, the Government presented to Parliament various amendments and new Bills, which were passed and negatively impacted the legal profession. Some laws are a direct attack on human rights.

Here, the amendment of the Basic Rights and Duties Enforcement Act, the Media laws and the TLS Act come to mind. The amendment of the BRADEA has narrowed the criteria for legal standing to challenge a law or policy that allegedly violates the constitution's bill of rights. Anyone wanting to file a case has to establish how a violation has "affected them personally."

Furthermore, the Government made a decision to withdraw its declaration allowing individuals and NGOs to directly submit applications against it at the African Court on Human and Peoples' Rights (AfCHPR) in 2019. These developments have dire consequences on the protection of human rights in the country.

Amendment of the TLS Act was in no way intended to make it stronger rather nail-cut its mandate. A weak TLS poses a severe threat to the legal profession as a whole. Tanzania needs an independent Bar. As we speak, the intended establishment of the Regional Advocates Ethic Committee is another challenge for lawyers.

The composition of the Committee shall include the Registrar, the State Attorney In charge and Chapter Convener. Any public servant may be nominated as a Secretary to the Committee. The question to ask, how safe it for an Advocate at the regional level not to be victimized just incase he or she is involved in an issue with a Regional or District Commissioner? How impartial can the Committee be considering the constant interactions between Advocates and State Attorneys at the regional level?

2.1.2 Eroded Advocate-Client Confidentiality Duty

An act or omission is illegal or legal, depending on what the law says. If the law is amended or a new law is passed, then an act or omission is made legal or illegal regardless of how the public or an individual feels about it. The Anti-Money Laundering laws in Tanzania have in recent times 'been used unreservedly' by law enforcement authorities.

When you mention 'AML' to a lawyer, it sends a chilling feeling in his or her spine. Specific to the lawyers is the duty to report suspicious transactions. The duty has brought a new challenge to lawyers. If I have no legal obligation to report if my client confides to me that he or she has committed murder, why should I report 'suspicious transactions' when dealing with clients?

2.1.3 Abuse of Power and Persistent Violations of Human Rights by State's Agents

Lawyers are not immune from human rights violations. Recently lawyers have been arbitrarily arrested and detained in remands without bail, and some have been charged with various crimes, including money laundering while performing their duties. For example, a lawyer acting as a company secretary for a company may find himself or herself behind bars for offences committed by the company. This must have made some lawyers have second thoughts regarding taking up appointments, such as acting as a company secretary for a private company.

This challenge results in narrowing lawyers' source of income to litigation and other works such as conveyance. Young lawyers, small firms and sole proprietors depend on litigation as the primary source of income. Failure or fear to take other works, especially in companies' boards of directors, restricts their financial capacity.

2.1.4 Global Impact of Covid-19

The pandemic has had devastating impacts on the global economy. The Tanzanian economy heavily depends on import and export trade with the outside world. Furthermore, foreign investment drives economic growth. Lawyers' primary, if not the only, source of income is work from clients.

Small and big law firms have been forced to scale down operations and reduce the number of employees to survive because their clients, local and international, have been struck hard by the pandemic. For young lawyers, they face a more severe challenge because they cannot get employment immediately when they are admitted. Law firms are not recruiting.

Unfortunately, there is no available data or study to show the pandemic's impact on the legal profession in Tanzania. This is also a challenge in its own right. Lack of research hinders understanding of the magnitude of the problem and ways of dealing with it. As a response to the pandemic, the world has been forced to revert to technology, that is, webinar tools such as zoom. The new norm, virtual offices and law firms, is not for every Advocate.

The use of Information and Communication Technology (ICT) is limited. The judiciary and lawyers are still way off when it comes to efficient and effective use of ICT. The pandemic has exposed this challenge even further.

Furthermore, technology is a double-edged sword. It has presented another set of challenges to lawyers. Now Human Resource Officers and even laypersons can access legal documents templates online and use them without needing a lawyer. The online company registration system allows 'agents' to register companies. This has been a lawyer's duty in the past.

2.1.5 A Growing Informal Sector

The informal sector is fast growing in Tanzania. This sector is not regulated and hardly uses legal services. For entrepreneurs in the informal sector, very few graduate to the formal sector. As a result, lawyers cannot offer legal services to those in the informal sector until or except when they have a court case.

Most cases, which end up on a lawyer's desk from entrepreneurs in the informal sector, result from poor drafting of contracts, ignorance of the law and non-compliance with statutory requirements in respect of taxes, duties and levies. Billing is a challenge in such cases because either the amount claimed is small, but the case is complex and may go all the way to the Court of Appeal, or the client cannot afford to pay the reasonable fee to the client.

2.1.6 The Enemy Within the Legal Profession

We have witnessed a high number of newly admitted advocates. They all must be accommodated within the profession. Questions on the newly admitted advocates' ability are raised whenever an opportunity shows up—a discussion for another day. However, the legal profession is lethargic to this influx of newly admitted advocates.

The Tanganyika Law Society should be the body to assist these newly admitted advocates during their transition from law school to the profession. The old advocates are too busy to mentor the new advocates. Their office spaces are tiny to take on board any extra advocate. This has led many young lawyers to remain unemployed or enter the legal profession completely inexperienced.

On another note, TLS must iron out the 'factions of its members', which threaten its impartiality regarding matters of public interest. Political inclinations cannot be avoided among members. It is their constitutional right. However, TLS must be apolitical.

2.2 Opportunities for Lawyers

Winston Churchill said, *“a pessimist sees the difficulty in every opportunity; an optimist sees the opportunity in every difficulty”*. The challenges highlighted may be surpassed and opportunities unearthed for lawyers.

Here are some of the opportunities,

2.2.1 *The New Arbitration Act, 2020*: Litigation is the inherent mode of disputes settlement. It cannot be done away with despite its adversarial nature and lengthy ending. However, arbitration remains an effective and efficient tool to resolve disputes.

It is for lawyers to advise parties to contracts to choose arbitration. Also, lawyers should equip themselves with the necessary skills and knowledge about arbitration. In this case, it should be noted that arbitration includes mediation, reconciliation and adjudication.

2.2.2 *Digitization of the Court System*: The Judiciary in Tanzania is undergoing the infrastructural development phase since 2016 with the World Bank's assistance. This is intended to remove the historic bottlenecks in the delivery of justice. Speed and convenience are critical. Most court processes are carried out in person.

However, with technology court processes such as filing and service of documents, case mentions, adjournments should not take an Advocate's precious time any more. The pandemic (Covid-19) has shown us that working from home is possible. Despite the limitations, opportunities are there for lawyers to embrace technology in providing legal services at a more affordable price, efficiently and effectively.

2.2.3 Cross Border Legal Practice: This area has been muted for some time. Discussions on this topic have not yielded the potential benefits to lawyers in Tanzania. So far, there are very few (if any) lawyers practising in other East African regions such as Kenya, Uganda or Rwanda from Tanzania. Tanganyika Law Society removed the individual mandatory membership to East Africa Law Society. This move was a setback because Tanzanian advocates have isolated themselves from regional integration and moved away from cross-border legal practice.

2.2.4 Developing Interest in 'New Areas of Practice such as Mining, Oil and Gas: For some time, the extractive industries have remained a reserve of the 'big law firms'. Understandably so because it requires experience and vast knowledge of the field. However, small firms and solo practitioners can have a piece of the pie. Developing specific skills or offering specific services on matters such as labour and litigation at a competitive price may give the clients a reason to rethink their legal panels' composition. However, this cannot happen if the small law firms and individual practitioners do not improve the way they do business and adhere to the expected international standards common to the sector.

2.2.5 A Matter of Fate: This year, on 17th February 2021, the country lost its sitting President, HE. Hon. Dr John Pombe Magufuli. The then Vice President, Hon. Samia Suluhu Hassan has been sworn in as President. After her inauguration, she has clearly stated her 'priorities'.

The President has directed Government officials to encourage foreign investments, stop using threats and force to collect revenues, open up the country to trading, work permits to foreigners should no be red taped etc. This is an opportunity for lawyers to ensure that these pronouncements are translated to law and implemented. With the new Head of State, there is always an opportunity to create a positive and meaningful collaboration with the Government, Parliament and the Judiciary to bring the intended changes in the legal profession.

2.2.6 Rethinking the role and structural model of TLS. Empowering Regional Chapters: Tanganyika Law Society remains the backbone for lawyers' unity and the profession's sustainability. It is time to rethink its role and how best it can perform its legal mandates. The recent developments, which led to the TLS Act amendments, should be used as catalysts for change.

The management structure should be relooked. Chapters should be given more broad mandates to deal with members' issues at the regional level. TLS should work towards having powerful chapters if it is to efficiently and effectively perform its general mandates.

2.2.7 Forging stronger partnerships: With the increased number of Advocates working solo poses challenges to Advocates, especially the young ones. We have witnessed prospering partnerships, although some have also failed.

The advantages of working as partners are not far to find and deserve no restatement. Young lawyers should be encouraged to work as partners so that they can complement individual strengths and capabilities.

3.0 Conclusion

Challenges and opportunities will always be there in the legal profession. Its non-static nature warrants its eternal existence. Law regulates human social, political and economic interactions. These will always change with time and events. For the Tanzanian lawyer, commercial awareness is critical. It is a tool that will determine his or her survival in the profession. It will also ultimately be the reason for the inner gratification of being one of the few clothed with the robe.

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