

Professional and Ethical Conduct for Lawyers: Some Challenges

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Introduction

- **Defining profession**

Profession simply means a paid occupation, especially one involving training and a formal qualification. It also means a body of people engaged in a profession.

(Concise Oxford Dictionary, 10th ed)

- Therefore legal profession may be defined to mean a body of men trained in the field of Law and works in different capacities.

Introduction, cont.

Ethics defined

- The moral principles governing or influencing conduct.

(Concise Oxford Dictionary, 10th ed.)

- It is the branch of philosophy concerned with the nature of ultimate value and the standards by which human actions can be judged right or wrong. E.g..
Do not tell lies/
- (Britannica Concise Encyclopedia, 2006 DVD)

Introduction (cont.)

- **Lawyer defined**

A Lawyer or attorney is a person trained and licenced to prepare, manage, and either prosecute or defend a court action as an agent for another and who also gives advice on legal matters that may or may not require court action.

- Legal practice varies from one country to another. In Britain, lawyers are divided into Barristers and Solicitors. In the U.S. attorneys often specialize in limited areas of the law (e.g., tax law, divorce In Germany, the chief distinction is between lawyers and notaries.

(Britannica Concise Encyclopedia, 2006 DVD)

Scope of the presentation

- This paper will cover the some challenges in the professional and ethical conduct for practicing advocates only. The conduct of other practicing lawyers such as State Attorneys, Legal officers employed in public and private institutions will not be covered.

The legal framework

- i. Advocates Act [Cap 341 R.E. 2002]
- ii. The Advocates (Accounts) Regulations G.N. No. 207 of 1956
- iii. The Advocates (Disciplinary and Other Proceedings) Rules G.N. No. 135 of 1955
- iv. The Advocates' Remuneration and Taxation of Costs Rules G.N. No. 515 of 1991.

Cont.

- v. The Notaries Public and Commissioner for Oaths Act [Cap. 12 R.E. 2002
- vi. The Rules of professional Conduct and Etiquette of the Tanganyika Law Society (TLS Rules)
- vii. Common Law rules of conduct e.g.. Cab Rank Rule, champerty etc .

Advocates (Regulation of Profession)

Regulatory mechanisms for advocates conduct

- **The President of the United Republic of Tanzania**
- His role is mainly on scale of fees
- Under s. 49 (3) Advocates Act the President approves the Remuneration order prescribing the sums which advocates may charge clients.
- Advocates are not allowed to overcharge or undercharge

The Chief Justice

- His powers are on admissions as well as in disciplining
- On admission under s. 8 (3) of the Advocates Act, the CJ must be satisfied that the person aspiring to become an advocate is of good character.
- He is the one who admits aspiring lawyers to the Bar
- In disciplining advocates the CJ may **admonish**, **suspend** for a specified period or make an order of **removing his name from the Roll**. See s. 22 of the Advocates Act.
- NB: the powers under s. 22 are also enjoyed by the Judges of the High Court but not Justices of Appeal.

The Advocates Committee

- It is an organ that deals with hearing of allegations of professional misconducts against practising advocates in Tanzania.
- The Committee is composed of three members who are;
- A Judge of the High Court
- The AG, Deputy AG or DPP
- One practising advocate

Cont.

- If the Committee found that an advocate is guilty may:
- direct that the name of the advocate be removed from the Roll;
- admonish the advocate; or
- suspend the advocate from practising for such period as the Committee may direct.

Cont.

- But in Dr. Lamwai's case, the Committee ordered him to pay the client the amount of money he was claiming in the case.
- This was the new development in the jurisprudence of the Committee.

The TLS Ethics Committee

- The in house disciplinary mechanism of the TLS
- Lead by National Chairperson
- Its role is merely conciliatory. May be a toothless dog?
- It is not sanctioned by the law.

Common misconducts committed by Advocates

- Fostering/encouraging litigation for financial benefit
- Undercharging leading to abandoning clients
- pressuring client to accept a result that does not meet the client's needs or desires
- failing to act on the client's instructions
- competitive strategies to win the case at expense of efficacy and equity
- failure to inform the client about the progress or status of the client's matter.

Misconduct (cont.)

- abuse of legal process by conniving with court staff
- controlling, obstructing or discouraging communication between disputants which would have perhaps enabled the settlement of the case amicably
- poor mastering of specialist areas of practice
- “win at all costs” attitudes.
- Gross negligence
- See also the LRCT Position Paper on the Review of Civil Justice System, p. 29

Professional and Ethical Conduct for Lawyers: Some Challenges

(a) Lack of enforceable Rules of Professional Conduct for advocates.

- Recently, we have the Rules of Professional Conduct and Etiquette of the Tanganyika Law Society (TLS Rules).
- But the said Rules has no force of law per the case of ***Mkono & Co. Advocates vs Ladwa*** [2002] EA 145

Case law

- In this case, Kalegeya J held that, the Rules of Professional Conduct and Etiquette of the Tanganyika Law Society are unenforceable because the Tanganyika Law Society has no mandate under the law to legislate subsidiary legislation.
- The TLS drafted the Ethics Rules in 2012. But the Rules are not yet in force.

(b) Large number of advocates

- From 1920 up to December 2010 the Roll of advocates stood at **1947** advocates (including deceased ones)
- At December 2014, the Roll stood at **4183** members! There was an increase of **2236** advocates in four years
- The growing number of advocates comes with the price tag of regulations, ethics and compliance.

(c) Slow determination of cases in the Advocates Committee

- The allegations of professional misconduct are not promptly determined by the Committee.
- The committee does not meet regularly to dispose matters before it.
- Justice delayed justice denied

(d) Ineffective in house mechanism under the TLS

- One of the objects of the TLS is to maintain and improve the standards of **conduct** and learning of the legal profession in Tanzania;
- But the disciplinary mechanism under the TLS is not sanctioned by the law.
- It is mainly conciliatory. A toothless dog?

(e) Inadequate remedies

- The advocate who is found guilty may be admonished, suspended from practice or removed from the Roll.
- The law is silent when a misconduct by an advocate resulted into financial loss to the client.
- The only remedy is for the client to sue for negligence in civil courts, another complicated procedure.

(f) Outdated legal framework

- Most of the laws governing legal profession were enacted by the colonialist in 1950s.
- There are many changes which occurred nationally and globally.
- The legal framework needs an overhaul to meet the current situation.

(g) Public awareness

- My simple research reveals that many citizens are not aware of where to report cases of professional misconducts by advocates.

Conclusion

- *“A man who never graduated from school might steal from a freight car. But a man who attends college and graduates as a lawyer might steal the whole railroad.”*
- The quotation shows that a lawyer's misconduct may result into far reaching consequences.

Cont.

- Consider the following:
- Forging a will
- Forging a transfer instrument
- Taking instruction an to attend failure to attend the case hence dismissal for non appearance.
- Drawing bogus agreements
- Corrupt practices etc

Cont.

- Therefore, legal profession like any other profession is full of do's and don'ts, restrictions, limitations etc.
- As Crispin said Lawyers should not approach legal ethics as they approach revenue law in which the underlying aim soon becomes avoidance rather than compliance.