

RUAHA CATHOLIC UNIVESRSITY

(RUCU)



FACULTY OF LAW

**A CRITICAL ANALYSIS ON THE LEGAL IMPACTS OF COMMITTAL PROCEEDINGS
TO THE ACCUSED PERSON IN TANZANIA**

By

ABEDINEGO Z. BENJAMIN

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Prepared under the supervision of

MS. ELIZABETH LUKELELWA

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**A Research Report Submitted to the Faculty of Law in Partial Fulfillment of the
Requirement of Award of the Bachelor of Laws Degree (LLB) at Ruaha Catholic**

University

(RUCU)

CERTIFICATION

The undersigned certifies that she had supervised the researcher namely Abedinego Zabron Benjamin throughout the whole research process and he hereby, recommends for the acceptance by Ruaha Catholic University Dissertation titled **“A critical analysis on the legal impacts of committal proceedings to the accused person in Tanzania,”** in partial fulfillment of the requirements for the awards of bachelor degree of Laws at Ruaha Catholic University.

Signed thisday of2024

.....

Ms. Elizabeth Lukelelwa

(Supervisor)

DECLARATION

I Abedinego Zabron Benjamin, do hereby declare that, this is my original work that has never been presented or currently being presented to any other university or other higher learning institution for the purpose of the award of similar degree bachelor of laws (LLB).

Signed this..... Day of 2024

Student Signature.....

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First and foremost, my gratitude goes to the Almighty God who is my life, my shield and my strength.

Despite the fact that this research paper comes out from my personal efforts, it will not be fair not to mention, at this stage, some people who have facilitated the outcomes of the work. However, it is impossible to mention all of them, who, in one way or another have contributed to the completion of this research work by their names. My special thanks go to my parents, for enabling me to be at the University in all aspects. And again would like to thank my brother Godlove Benjamin for his support in my education. I feel also indebted to thank my supervisor, Ms. Elizabeth Lukelelwa for her indispensable assistance, supervision and a very close guidance, encouraging, and posing critical comments and corrections from time to time, efforts which have, to a greater made it possible and shaped this research paper also my lecturers in the Faculty of Law at the University. I say thank you not only because you have to a greater extent enabled me to come up with this paper, but also for transforming and importing me into the legal profession, which I commence by evidencing your contribution through this research paper. This research paper comes in as a combination of knowledge impacted to me through your efforts. “I thank you all.

DEDICATION

I am dedicating this research paper to my Almighty GOD who has added value to my existence and has made my life so miracle. Glory to GOD.

I Abedinego Zabron Benjamin wishes to devote this work to my parents. Again to my siblings especially my brother Godlove Benjamin for his support in my education.

ABBREVIATION

| | |
|-------|--|
| CPA | Criminal Procedure Act |
| EA | East Africa |
| ICCPR | International Covenant on Civil Political Rights |
| PCF | Police Case File |
| PI | Preliminary Inquiry |
| RCO | Regional Crimes Officer |
| S | Section |
| SA | State Attorney |
| TLR | Tanzania Law Report |
| UDHR | Universal Declaration of Human Rights |

LIST OF LEGAL INSTRUMENTS

Criminal Procedure Act chapter 20 revised edition 2022

International Covenant on Civil and Political Rights of 1966 (ICCPR)

The African Charter on Human and Peoples' Rights of 1986

The constitution of united republic of Tanzania of 1977 as amended time to time

The United Nations Convention on the Rights of the Child of 1990

LIST OF CASES

Barton v. R (1980) 32 ALR 449

Barton v. The Queen (1980) 147 C.L.R. 75 at 99

Central Asbestos Co. Ltd. v. Dodd [1972] 2 All ER at 1153

Grassby v R [1989] HCA 49

Hamis v. Republic (1993) TLR 213

Hassan Waliseme v R. (1958) EA P.803

Miscellaneous civil application No 21 of 2013

R v Bushania bin Byabachwezi

Republic v Asafu Tumwine

Zephrine Galeba V Attorney General

ABSTRACT

This study is confined to the delay of cases in subordinate courts particularly Resident Magistrate's Courts and District Magistrate's Courts due to an examination of committal proceedings, one of the practices that are blamed for causing delays because these inherited adversarial system of dispute settlement which is time consuming, tiresome and it involves technical and complex rules of procedure which leads to delay of cases in subordinate courts.

Chapter one gives an introductory, background of the research, statement of the problem objectives, and the significances of the study. It also prescribes the hypothesis, methodology used to carry out the study and the scope within which this research paper has based also it states limitation of the research, research methodology and literature review.

In chapter two provides a brief summary and an overview of the general concept of the committal proceeding, justice and delay of cases. Moreover, it shows a concept of criminal justice particularly on the issue of justice delivery and human rights. Also it provides the International and Regional instruments governing the speed up of administration of justice.

Chapter three of this research endeavors to the legal and institutional frameworks governing committal proceedings in Tanzania

Chapter is chapter four which contain research findings and analysis.

Chapter five contain conclusion and recommendation.

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CHAPTER ONE

GENERAL INTRODUCTION

1.1 Background to the Problem

Committal proceeding is a proceeding held by subordinate court with a view to Commit an accused person to the High Court for trial.¹ Committal proceeding apply to cases that must be dealt by the High Court but whose evidence collection process is done by the subordinate court² It is a requirement of the law that whenever any charge has been brought against a person accused of an offence not trial by the subordinate court or as to which the court is advised by Director of Public Prosecutions in writing or otherwise that is not suitable to be disposed of upon summary trial, committal proceeding shall be held according to the provisions herein after contained by a subordinate court of competent jurisdiction.

In Tanzania committal proceeding started long time ago. It started during colonial times particularly in 1945. The British colonial master then, enacted for Tanganyika a law known as the Criminal Procedure Code which is chapter 20 of 1945. In this law there was a requirement of committal proceeding.³ After the repeal and the replacement of the Criminal Procedure Code, the enacted law which is the Criminal Procedure Act No. 9 of 1985 which is revised in 2022 retained committal proceeding as an important aspect in the conduct of criminal trial.⁴

The rationale for having committal proceeding is to help investigative authorities to collect their evidence fully before the case is forwarded to the High Court for trial. Committal proceeding is also used to filter cases which are suitable to go to the

¹Section 2 of the Criminal Procedure Act, Cap. 20 [R.E 2022]

²Section 244 of the Criminal Procedure Act, Cap.20 [R.E 2022].

³Section 216 of the Criminal Procedure Code, 1945.

⁴ Section 244 of the Criminal Procedure Act, No.9 of 1985 currently Cap. 20 [R.E 2022].

High Court. However, during committal proceeding when the charge is read to the accused person by the magistrate, the accused person is not allowed to plea to the charge. To make any reply to the charges. The accused person is not required to make any reply because the court is not competent over the matter. Also the accused person is not required to plea to the charge because it is not his trial.

The procedure of committal proceeding is provided under part VII of the Criminal Procedure Act and the first schedule of the Criminal Procedure Act, the schedule sets out the offences not trial by Subordinate Courts though this offences trial by Subordinate Court should be proceeded to by the High Court. This offences are trial by the High Court as the Court of first instance hence in such cases the power of the Magistrate are strictly limited, also under section 244 of the Criminal Procedure Act the Director of Public Prosecution is given powers to make an order that requires committal proceeding to be mandatory conducted when offences trial by the Subordinate Court should be proceeded to by the High Court⁵. Also committal proceeding becomes mandatory when the law provides so as in cases of murder and treason an accused person cannot appear before a Judge for trial unless preliminary inquiry is conducted even if the accused person pleads guilty as it was illustrated in the case of *Republic v Asafu Tumwine* as it was ruled that the High Court has no jurisdiction over a matter that was supposed to be subjected to committal proceeding and it was not⁶.

It is alleged that committal proceeding is conducted for the purpose of speeding up trial to the High Court. It should be known that the Constitution of the United

⁵ Criminal Procedure Law [CAP 20 R.E 2022]

⁶ Criminal revision no. 1 of 2006 CAT unreported

Republic of Tanzania require speed disposal of disputes.⁷ The Constitution provides for expeditious delivery of justice⁸ as it provide that in delivering decision in matters of civil and criminal nature the court shall observe principles including not to delay dispensation of justice without a reasonable ground. Though it has been observed that the procedures involved in committal proceeding where subordinate court explain the charges to the accused and collect the evidence and later the case is forwarded to the High Court for the trial this takes time hence delay administration of justice.

Although the procedure of committal proceeding was introduced to filter cases which are suitable to be tried by the High Court for the purpose of speeding up trial, but the practice reveals that the procedure defeats timely delivery of justice. The procedure defeats timely delivery of justice because the same committal proceeding will be repeated by the High Court during trial. One accused person may reasonably ask himself, if the procedure is being repeated in the High Court for the same purpose, so why holding it in the subordinate court. This study intends to investigate on the appropriateness and validity of the procedure of committal proceeding in order to see how it defeats timely delivery of justice in our court in Mainland Tanzania.

1.2 Statement of the Problem

It is a requirement of the law that no criminal case can be tried by the High Court unless it is committed to it by committal proceeding.⁹ Principally when the court is

⁷Article 107A (2) of the Constitution of the United Republic of Tanzania, 1977 as amended time to time

⁸ Article 107A (2)(b) of the Constitution of the United Republic of Tanzania (1997)

⁹Section 178 of the Criminal Procedure Act, Cap 20. [R.E 2022].

administering justice is required to timely deliver justice. This is also a principle of equity that justice delayed is justice denied.

Despite the fact that the procedure of committal proceeding is done for speeding up trial by eliminating unnecessary facts and by making sure that the case is brought to the High Court after evidence having completed, however, preliminary observation shows that committal proceeding delays justice delivery. It delays justice delivery in a way that the same committal proceeding which was conducted by the subordinate court is repeated at the High Court.

As in the case of *Zephrine Galeba V Attorney General*¹⁰. One among the matter the petitioner file for is in the matter of a petition to challenge as unconstitutional section 244 and 245 (1) (2) and (3) of the criminal procedure Act.

Thus, this study is carried out in order to investigate the way the procedure of committal proceeding delays justice by prolonging the trial in the High Court.

1.3 Literature review

This part intends to analyze and review literature covering the procedure of committal proceedings. Several authors from Tanzania and from other jurisdictions have written much on the procedure of committal proceedings.

Hirschel, J. David¹¹, Says that the abolishment of committal proceedings in England exemplifies a focus on expediency and efficiency rather than the right of the accused. In our point of view, Hirschel is partly right on his observation that, “abolishment of committal proceedings... exemplifies a focus on expediency and efficiency”,

¹⁰ Miscellaneous civil application No 21 of 2013.

¹¹J. D. Hirschel, *Criminal Justice in England and the United States*

Asher,¹² committal proceeding is useful in the administration of criminal justice. However, the author calls for the abolition of committal proceeding. The author argues that committal proceeding requires running a mini trial before the real trial which can be detrimental in terms of resources and for victims and witnesses who may be required to testify twice. The reason for abolishing committal proceeding is to safeguard interests of victims and witnesses and of the criminal justice in general. That court procedures should be made efficient by cutting out unnecessary court hearing. Committal procedure have been criticized for providing a mechanism for the accused persons to prolong the duration of the criminal justice process and delay the commencement of their trial.

Victoria and New South Wales, reviewed the committal proceeding in the 1980s and again in 1990s as various legal groups, individuals and reform committees have evaluated the committal hearing or have been tasked with recommending its abolition or reform in Australian jurisdiction. In the late 2000s, Queensland, Tasmania and Northern territory evaluated and proposed changes to the committal procedures operating in their respective jurisdictions. In 2007 the Justice Amendment Act was enacted in Tasmania which resulted in significant changes to the committal hearing through amendments to the Criminal Code 1924 and the Justice Act 1959 the reforms introduced significantly different procedures from which operated previously in the summary court.

The key premise informing the changes to the pretrial procedure in Tasmania was to address inefficiency within the court system as reforms limit delays that occur between the first appearance in the Court of Petty Sessions and having the matter

¹² Asher Flynn 2013 37 Criminal LJ 175

transferred and tried in the Supreme Court.¹³ The writer has provided a well and detailed information on advantages of abolition of committal proceeding that it limit delay of administration of justice by cutting unnecessary court hearing, however the writer did not discuss on detail how committal proceeding delay administration of justice therefore this study will cover on details how committal proceeding delay administration of justice.

Mwalili¹⁴, states that the role of the court is clearly visible in offences that are trial only by the High Court, these offences include murder and treason which begin by the holding of committal proceeding before proceeding to trial and according to him he considers committal proceeding as both investigatory undertaking by the court and as a process that clarify petty cases. In committal proceeding the role of Magistrate's Court is to ensure that only that cases where prima facie evidence is disclosed proceed for trial therefore excluding petty prosecutions, the other role is to hear the witnesses give evidence on oath and testifying evidence through cross examination. The writer discussed the role of the court and role of Magistrate in committal proceeding, he did not discuss on how committal proceeding speedy administration of justice or delay it hence the study will focus on how committal proceeding speedy or delay administration of justice.

Terry & Robertson¹⁵, in their article titled the future of committals-a defense lawyers perspective discussed about committal proceeding, according to them committal proceeding do not add to the delay problem to the court it rather assist in shortening of superior courts trials and they argue that delay is being used by people

¹³ Asher Flynn 2013 37 Criminal LJ 175.

¹⁴J. Mwalili, *The Role and Function of Prosecution in Criminal Justice*

¹⁵T. Robertson Future of committals – a defense lawyer

who are opposed to committal hearing as convenient excuse for other reasons¹⁶. Hence they argued in favor of committal proceeding by pointing out the advantages of committal proceeding by quoting Mr. Justice Fox in *Republic v Kent ex parte Macintosh*.¹⁷

“The main advantage to the accused is probably the knowledge he gained before the trial of what the crown witnesses say on their oath when constrained by the rules of evidence and when cross examined. There are other advantages, such as seeing the witnesses and observing their demeanor which are well are recognized, the fact is that the law provides a procedure which has the consequences mentioned. There can be no doubt that the preliminary examination forms an important part in the whole trial process and that where there is no preliminary examination the accused person concerned can be at serious disadvantage as compared with others who have the charges against them dealt with in the ordinary way”

John Wood opposed the views of Terry and Robertson by arguing that the abolishment of committal proceeding as a response to avoidance of court delays hence the question of position of committal proceeding in administration of justice is highly debated. The writers supported committal proceeding by pointing out its advantages and how the accused person can be at a serious disadvantage in absence of committal proceeding however the writers did not point out the disadvantages that the accused person may face and how committal proceeding shorten the superior court trials and did not discuss in detail how committal proceeding do not add delay problem of administration of justice to the courts, hence the study will focus on

¹⁶ The Tanzania lawyer journal 2017 1JTLS cite properly

¹⁷ (1970) 17 FLR 77

details how committal proceeding add the delay problem to the courts in administration of justice.

Coldrey¹⁸, in his article committal proceeding compares two opposing propositions discoursed by common law judge the first proposition was expressed in the case of *Barton v Republic*¹⁹ as follows;

“It’s now accepted in England and Australia that committal proceedings are important in our system of criminal justice, they constitute such an important element in the protection of the accused that a trial held without antecedent committal proceeding unless justified on strong and powerful grounds must necessarily be considered unfair. To deny an accused the benefit of committal proceeding is to deprive him of a valuable protection uniformly available to other accused persons which is of great advantage to him whether in terminating the proceeding before the trial or at the trial. The most obvious detriment is the loss of opportunity of being discharged by committing magistrate an accused also losses the opportunity of gaining precise knowledge of the case against him and as well hearing the crown witnesses give evidence on oath and testing the evidence by way of cross examination”.

“A number of jurisdictions have followed English precedent in placing responsibility for prosecutions in the hands of directors of public prosecutions being independent highly qualified professionals having a status equivalent to judge this development should render committal proceeding unnecessary and pave the way for its abolition.

Coldrey states that sir Harry identified two main functions of committals the first is to ensure that the accused was not put in trial unless there was either a probability of conviction or a prima facie case against him, the second is to appraise the accused

¹⁸ J.Coldrey: *Committal Proceeding the Victoria perspective cite properly*

¹⁹ *Barton v. R* (1980) 147 CLR 77.

fully and in a detail of the case that has been brought against him according to sir harry the first function could now be performed by directors of public prosecution while the second could be done by provision to the accused prior to trial or full statement by all witnesses²⁰. The writer discussed the function of committal proceeding to the accused person and importance of committal proceeding to the accused person and forget to address on how committal proceeding can delay or speedy administration of justice hence the study will focus on detail how committal proceeding delay administration of justice.

1.4 Hypothesis

It seems that the procedures of committal proceedings contribute to the delays of justice to the accused person in Tanzania, and this have legal impacts to the accused person.

1.5 Objective of the study

1.5.1 General objective

To make a critical analysis on the legal impacts of committal proceedings to the accused person in Tanzania.

1.5.2 Specific objectives

- i. To analyses whether or not the procedure of committal proceeding delay delivery of justice in Tanzania.
- ii. To analyses the legal effect of committal proceeding in the whole process of administration of justice in Tanzania.

²⁰Barton Vs R (1980) CLR 77.

1.6 Significance of the study

- The study will provide the light on the importance of abolition of committal proceeding and alternative ways to be applied.
- The study will awaken the Parliament and other law making bodies to amend the laws or enact new laws regulating the aspect of committal proceeding.
- The study will help the whole judiciary system to speed up delivery of justice and remove the burden of cases to the High Court.
- The study will help the whole society to get justice within a reasonable time and serve time for both people and professionals participate in system of delivering justice.

1.7 Research methodology

The researcher use both library research and field research.

1.7.1 Library Research

Under this method, the researcher for the purpose of identifying and consulting materials such as legal instruments and books that provide legal information with respect to this topic use the library of Ruaha catholic university (Benjamin Mkapu Learning resources library). The information that the researcher be looking from the Library are those related to the research topic on how unconstitutional law is declared, how the parliament amends the law and the gap in law that have to be fixed or amended by the law and the clearly procedures of amending it.

1.7.2 Field Research

This deals with creation and collection of actual and authentic information by field of operation in any organization. The process involves determining what precise data is necessary and from where this information needs to be actually gathered. It is treated as the primary research approach because the determined data is specific to the purpose of gathering that data.

Under this method, one research methodology be used by the researcher in collecting data in the field whereby the methodology be interview only

1.8 Scope and limitations of the study

1.8.1 Scope of the study

This study deals with a critical analysis on the legal impacts of committal proceedings to the accused person in Tanzania.

1.8.2 Limitations of the study

The task of collecting data and writing the research was not easy at all simply because the researcher experiences several limitations. As follows

- The researcher faced lack of enough materials such as lack of enough funds.
- The researcher faced lack enough time and meetings with respondents.

However, the researcher was try his best gather all necessary information from the key personnel that will facilitate the accomplishment of this work.

CHAPTER TWO

CONCEPTUAL OF FRAMEWORK OF COMMITTAL PROCEEDINGS AND DELAY OF TRIALS

2.0 Introduction

This chapter provides a brief summary and an overview of the general concept of the committal proceeding, justice and delay of cases. Moreover, it show a concept of criminal justice particularly on the issue of justice delivery and human rights, rights of the accused person, concept of justice delay is a justice denial and the laws that deals with the issue of justice delivery and committal proceedings.

2.1 Overview of committal proceedings

Committal proceedings involves powers of a lower court to undertake preliminary inquiries over a case with a view of ascertaining whether sufficient materials exist so as to send the case to the high court for trial. Therefore, subordinates courts undertake the preliminary inquiries for all cases which trials by the high court and all other cases as directed by director of public prosecution and then forward it to the high court for trial by way of committal proceedings.

This practice is important because it enable to determine whether there are sufficient evidences to bring the accused to the trial or the legal assessment of the crime is correct and if there are any circumstances that exist and make it impossible to hear the case in court, and so on²¹. However, the duty of the prosecutor in committal proceedings is under no obligation to reveal all the evidence against an accused, whether testimonial or real, and need only call so much as will procure a committal for trial. But the purpose of this is to ensure that no one shall stand his trial unless

²¹ Barton v. The Queen (1980) 147 C.L.R. 75

prima facie case has been made out. Every criminal case that goes for trial in the High Court needs to have been preceded by a preliminary inquiry that is committal proceedings held in a District Court and Resident Magistrate's Court. This committal is designed to collect the evidence together for the primary purpose of checking whether the prosecution side has sufficient evidence for the case to go to trial.

Therefore, the main purpose of committal proceeding is to permit the conducting of preliminary hearing first in all serious criminal offences so as to determine whether there is sufficient evidence to require an accused to stand for trial. Committal proceedings generally held by the Magistrate who conducting the preliminary inquiries of the case by hears evidences from the prosecution which is recorded and can be used at the trial²². After hearing the evidence, the magistrate must determine if there is sufficient evidence to justify the defendant being committed for trial. If there is insufficient evidence, the magistrate may discharge the accused person. This does not amount to an acquittal. Moreover, the purpose of the committal proceedings is to determine whether there is sufficient evidence to justify sending the defendant to stand trial. It is of interest to know, therefore, the proportion of cases in which magistrates decide that the evidence is not sufficient for this purpose. In the case of *Grassby v R Dawson J* in the High court of Australia show the important of committal proceedings in the criminal process which is to determine if there are sufficient evidences that can force the accused to stand for trial and the magistrate should discharge a defendant if he is of the opinion that, having regard to all the evidence, a jury will not be likely to convict²³. Committal proceedings are an important element in our system of criminal justice. They constitute such an important

²² Australia Law Reform, *Discussion paper law reform of committal proceedings* (1986)

²³ [1989] HCA 49.

element in the protection of the accused that a trial held without antecedent committal proceedings, unless justified on strong and powerful grounds, must necessarily be considered unfair²⁴. In the most famous case of *Barton v. R*²⁵ the majority held the committal proceedings to be a critical requirement in the achievement of a fair trial. Committal proceedings identify as an essential part of the criminal justice system since it provides an effective screening process to prevent weak cases reaching for trial, and it allows an early identification of guilty pleas, provides a comprehensive disclosure of the Crown's case and allows concentration on the facts in dispute, allows the defense to test the witnesses for the Crown and allows the witnesses to prepare for the trial.

Committal proceedings has been defined by the Victoria Law Reform Commission to mean the procedure by which suspects who have committed serious offences are arraigned before the lower court so as to find out whether there is enough evidence to take them to the higher court for the determination of their offences²⁶.

Also Committal Proceeding in the Great Soviet Encyclopedia; committal proceeding is defined as bringing to trial, an independent stage in criminal procedure in which the sufficiency of grounds for hearing a case in court is examined. At this stage it is determined whether or not the preliminary investigation has been conducted correctly and completely, evidence is sufficient to bring the accused to trial, the legal assessment of the crime is correct, circumstances exist that make it impossible to hear the case in court, the given court has jurisdiction, and so on. In some countries where there is no sufficient ground, the case is returned for additional investigation or the

²⁴ *Barton v The Queen* (1980) 147 CLR 75

²⁵ (1980) 32 ALR 449.

²⁶ The Victoria Law Reform Commission Report, *Committals Issues Paper, Victoria Law Reform Commission*, (2019)

proceedings are stopped. As a rule, the committal proceedings are handled by a single judge or magistrate. In cases of crimes by minors, cases where the death sentence can be applied, and cases where the judge does not agree with the bill of indictment or considers it necessary to change the restraining measure applied to the accused, the proceedings are handled by a special session of the court in which the prosecutor must participate. However, in Tanzania the Magistrate Court during the committal proceedings have no powers to determine the sufficiency of evidence, as seen earlier its function is limited to only recording the evidence and identifying witnesses.

2.2 Concept of justice and delay of trial

It's a duty of the court to insure the delivery of justice, the ends of justice, however, may easily be subverted in a judicial system punctuated with delays in the processing of cases filed in court and marked by congested court dockets²⁷. The harm that delay poses to the administration of justice is critical and, in some instances, irreparable because it affect the whole system of administration of justice and judicial process²⁸. For the long period one the problem facing in administration of justice is delay of cases due to that the courts failed to dispose the cases fast and within a reasonable time which lead to injustices²⁹

2.2.1 Delay

The word delay as far as the determination of criminal cases are concerned refers to the determination of a case for long time without any reason calculated from the day

²⁷ L.C Emmanuel., and P.F. Florentino, *The problem of delay in the Philippine court system*: Philippine Law Journal Volume 2 (1987).

²⁸ L.C Emmanuel., and P.F. Florentino, *The problem of delay in the Philippine court system*: Philippine Law Journal Volume 2 (1987)

²⁹ New South Wales Law Reform Commission, (1987). *Criminal Procedure: Procedure from Charge to Trial -Specific Problems and Proposals, Discussion Paper No 14, the Com- mission, Sydney*

when a case is brought before the court to the day when the judgment of the court is pronounced or delivered³⁰.

Delay in administration of justice referred to the time spent before case disposition that extends case development and processing beyond reasonable point³¹. There is distinction between the court-system delay and that caused by Lawyers or parties in disputes. Court system delay refers to the waiting time exacted of litigants who are ready and eager to go ahead when the court is not while later is the delay created through lawyers or parties unwillingness to proceed with the case³².

Delay in the administration of justice is not a new problem because it existing for a long time. However, it has now acquired terrifying proportions. Delay of cases it put the judicial system under strain and it shaken the confidence of the people also³³. It has been observed in some instances that the longer it takes to terminate trial proceedings finally, the more likely it becomes for litigants and their witnesses to lose interest in their cases. The effect of delay in criminal cases it causes the violation of accused rights because delay denied their constitutional right to a speedy trial and frequently feels they have been denied justice completely³⁴.

The problem of delay in determining criminal cases in Tanzania Mainland is historical and poses a challenge to the judicial officers. It occurs mostly in criminal proceedings which starts from the district court or Resident Magistrate court in which accused persons charged for offence such as murder, treason, terrorism; drug trafficking and

³⁰CMJA Conference Report (2018), *Building an Effective, Accountable and Inclusive Judiciary*, CMJA, United Kingdom

³¹F. Twaib, *The legal profession in Tanzania: The law and practice* Dar es salaam Tanzania university press 1997

³² F. Twaib, *The legal profession in Tanzania: The law and practice* Dar es salaam Tanzania university press 1997

³³ L.C Emmanuel., and P.F. Florentino, *The problem of delay in the Philippine court system*: Philippine Law Journal Volume 2 (1987).

³⁴ H.K Bisimba &C.M Peter *Justice and Rule of Law in Tanzania, Selected Judgments and Writings of Mwalusanya J* (2015).

economic offences are required to be arraigned before subordinate court for committal proceedings after which they are committed for trial in the High court. Accused person is therefore held in custody for many years waiting for DPP to decide whether the evidence gathered is enough to justify sending him or her to the jurisdiction of the High court for trial.

2.2.2 Concept of justice

The word justice has been derived from the actual concept of justness which acts as the elemental factors for any state to provide its people. Justice is to say that it is what the right minded members of the community-those who have the right spirit within them believe to be fair³⁵. Justice is a moral ideal that the law seeks to uphold in the protection of rights and punishment of wrongs³⁶. Generally, Justice mean what is right, fair appropriate and what a person deserves. Access to justice does not mean being able to sue the Government of the day only but also once justice is accessed it should be speedy for it to be meaningful to the citizen³⁷. The justice which is meant here is a justice which transcends the law courts and finds better expression in restoring and upholding the dignity of man everywhere. Always administration of justice is compatible with the principles of natural justice. The principles of natural justice is about fairness and justice in the society, and these address how judicial administration and other organs are to function in the process of reaching a fair and just decision in determination of the issue before them.³⁸The failure to address the

³⁵F. Twaib F, *The legal profession in Tanzania: The law and practice* Dar es salaam Tanzania university press 1997

³⁶E.A, Martin, and Law, J. *Oxford A Dictionary of Law. 6th edition*. Published by Oxford University Press (2006)

³⁷H.K, Bisimba, & M.C Peter, *Laws and justices in Tanzania: Quarter of the century of the court of appeal*, 2007.

³⁸H.K, Bisimba, & M.C Peter, *Laws and justices in Tanzania: Quarter of the century of the court of appeal*, 2007.

problems of backlog and delay of cases in our court systems could constitute denial of access to justice especially since delayed of litigation provides a strong discouragement for using the courts. Where legal and judicial outcomes are not just and equitable due to delays in the process, access to justice is definitely denied³⁹.

2.2.3 Criminal justice

The criminal justice system is the set of agencies and processes established by governments to control crime and impose penalties on those who violate laws. Criminal justice is the system of practices and institutions of government directed at upholding social control, determine and mitigating crime or sanctioning those who violate laws with criminal penalties and rehabilitation efforts. Those accused of crime have some protection against abuse of investigatory and prosecution powers. The challenge facing the criminal justice system is delay in committal of cases due to delay of investigation and the time wasted in conducting Preliminary Inquiry by subordinate courts and failed of the magistrate to make an order of committal in time to the High Court for trial⁴⁰. Besides, there are number of cases where the magistrates who conducting Preliminary Inquiring forgot to make proper order of committing the accused to the High Court for Preliminary Hearing as a result the whole proceeding was declared a nullity and whole process should start afresh with the holding of a fresh Preliminary Inquiries and Preliminary Hearing before the case could be set for trial this caused untold suffering to many remedies who find themselves spending a long time in custody awaiting for determination of their charges⁴¹. The process of a preliminary hearing, with then a wait of some months perhaps even a year before the

³⁹ R.G. Fox, *Criminal delay as abuse of process* (1990).

⁴⁰ V.R. Makaramba, *The Practical and Legal Challenges of Justice Delivery in Tanzania: Experience from the Bench* (2012).

⁴¹ V.R. Makaramba, *The Practical and Legal Challenges of Justice Delivery in Tanzania: Experience from the Bench*

trial, is mystifying and unsatisfactory, the fact is that law does not provide for the limitation of time for cases to be committed in the high court for trial this lead to accused wait of some months perhaps even a year or years before the trial as a result the room for violate the principle of justice delayed is justice denied is become open.

2.3 Justice delivery and human rights

The right to justice is the one of the basic principle of human rights as guaranteed in different International instruments that address the equality of people before the law, their right to equal protection under the law, and their right to be treated fairly by a tribunal or court and shall have the right to have his cause heard that is the right to be tried within a reasonable time by an impartial court or tribunal. Therefore in order to secure justice there are standards that should be met which are availability of impartial courts or tribunal, good laws which are understood by majority of the people, and the right to be tried within a reasonable time by an impartial court or tribunal⁴².

In Tanzania, the situation and status of the justice delivery has many challenges or barriers. In general, it can be said that justice delivery in Tanzania is critically deficient and not adequately guaranteed. Long delays are another critical challenge and a chronic disease in Tanzania⁴³. Courts are slow in bringing cases to a conclusion.

Therefore, delay in determine the cases in time leading to the injustice. These delays cause to back log of cases in our courts and it lead to failure to administer justice for those people who are detained as suspects and spent for a long time in prison waiting for the determination of their charges. In criminal cases, delay causes hardship to accused persons, particularly to those who are in custody.

⁴² A joint project of the National Commissions for UNESCO of France and Germany.

⁴³ V.R. Makaramba, *The Practical and Legal Challenges of Justice Delivery in Tanzania: Experience from the Bench*

Delay is also a denial of justice because contrary to the notion of presumption of innocence, awaiting trial prisoners detained because they cannot afford bail or due to the seriousness of the offence, often spend more time in detention than the maximum sentence prescribed for that particular crime. Hence, an innocent person may end up serving punishment for an offence he never committed before the case is concluded. This erodes confidence in justice and presumption of innocence.

Therefore, the delay of committal proceedings cases is bad thing because an accused might have stayed in remand for a long time but at the end of the day be found innocent and acquitted. All accused persons must be treated with reasonable decency of fair procedure and within a reasonable time and to be presumed innocent until proved guilty in order to respect the constitutional rights of criminal justice because justice delay is justice denied.

2.4 The principle of equity of justice delay is justice denial

This principle is the basis for the right to a speedy trial and similar rights which are meant to expedite the legal system, because of the unfairness for the injured party who sustained the injury having little hope for timely and effective remedy and resolution.

The principle of equity is a fundamental principle that guarantee fair treatment, access and opportunity⁴⁴.

The principle of equity of justice delay is justice denial emphasizes the importance of timely legal redress and equitable relief for both. Various sources attribute to the principle of equity of justice delayed is justice denial for example the Magna Carta of 1215 also contain a clause emphasizing the importance of swift justice or speed up of

⁴⁴ G.M. Pikis, *An analysis of the English common law, principles of equity and their application*

justice. Application in modern in context justice delayed is justice denial remains relevant in advocating for efficient legal processes and timely resolution. It serves as a rallying cry for legal reforms who seek to address delays of in courts, tribunals and other judicial bodies that hinder access to justice.

CHAPTER THREE

THE LEGAL AND INSTITUTIONAL FRAMEWORKS GOVERNING COMMITTAL PROCEEDINGS IN TANZANIA

3.0 Introduction

This chapter specifically discusses the legal framework and institutional framework governing the committal proceedings in Tanzania.

3.1 Domestic laws

3.1.1 The constitution of united republic of Tanzania

The requirement for a suspect of an offence to be heard without delay not only is an international convention's guarantee but also a constitutional guarantee. For example, it has been provided that courts should not delay without reason the determination of any matter before⁴⁵. This means that if a delay will occur while determining civil or criminal case without any reasonable ground, such delay will be considered to be a breach of constitutional principle by the court. So this is the same applies in the committal proceedings lead to the delay of delivery of justice to the accused person

3.1.2 Criminal Procedure Act

The Criminal Procedure Act provides the procedures on how to conducting criminal offenses in the court. The Act also provides for procedures for subordinate courts to conduct preliminary inquiry where the court has no jurisdiction to try an offense if such offence is so serious, also provides the procedures on how an accused person can be committed to High Court by way of committal proceeding.

In the first Schedule to the Criminal Procedure Act, shows those offences trialed by subordinate courts and those trialed exclusively by the High Court. Thus, subordinate

⁴⁵ The constitution of united republic of Tanzania as amended time to time Article 107A (2)

Courts have no power to determine cases indictable exclusively by the High court. In such cases a magistrate has to conduct what is referred to as “Preliminary Inquiry” in the case and then commit the accused to the High Court for trial⁴⁶.

The law stipulates for the procedure of conducting criminal offenses by the court; the Act also provides procedures for subordinate courts to conduct preliminary inquiry where the court has no jurisdiction to try an offense such as murder⁴⁷. Therefore, before an accused can be tried in the High Court, a preliminary inquiry must be conducted by a Magistrate’s Court of a competent jurisdiction. This inquiry is known as a preliminary inquiry and the proceedings are often referred to as ‘committal proceedings’.

According to Section 2 of Criminal Procedure Act committal proceedings are proceedings held by a subordinate court with a view to the committal of an accused person to the High Court⁴⁸. There are three circumstances under which a magistrate’s court may commit an accused person to the High Court: (i) if the offence is not triable by the magistrate’s court (ii) if it is advised by the DPP that the offence is not suitable for summary trial, (iii) if in the course of trial, the offence proves to be unsuitable for summary trial. The High Court has power to regulate its own practice and procedure in the exercise of its criminal jurisdiction.

The trial in the High Court is commenced by the information filed by the DPP at the end of committal proceedings in magistrates’ court. The law has given a guideline on how a magistrate should statutorily conduct a committal proceeding, his guideline is as follows:

⁴⁶ F. Mirindo, *Administration of Justice in Mainland Tanzania*, First Edition, Publisher: Nairobi, Kenya: Law Africa Publishing (K) Ltd

⁴⁷ B.D. Chipeta, *Magistrate Manual*, T M P Tabora Publishers, 1989

⁴⁸ The Criminal Procedure Act, Cap 20, R.E 2022.

Once a person is charged with an offence which is trialed by the High Court and brought before a Magistrate, due to the nature of the offence the magistrate court has no power to determine such offence then the magistrate will conduct the preliminary inquiries only and then committed an accused to high court for trial⁴⁹. The duty of the magistrate is to read over the charge against the accused person. According to section 245 (2) of the Criminal Procedure Act provides that when an accused arrested and brought before a magistrate court, the magistrate concerned shall read over and explain to the accused person the charge against him but the accused person shall not be required to plead or make any reply to the charge⁵⁰.

The Magistrate duty at this stage is to let the accused person know why he/she has been brought to court. According to the case of *Hassan s/o Waliseme v Republic* the court state the object of a preliminary inquiries is to disclose the substance of the case against the accused person⁵¹.

In the case of *Republic v Bushania bin Byabachwezi*, it was emphasized that in a preliminary inquiry the magistrate after reading the charge must caution the accused first, that the accused is not required to say anything and secondly, that whatever the accused says after being cautioned will be taken down in writing and may be given in evidence against him on his trial.

Section 246(3) of the Criminal Procedure Act state that in order to do that, the magistrate will address the accused in the following: this is not your trial. If it is so decided, you will be tried later in the High Court, and the evidence against you will

⁴⁹ F. Mirindo, *Administration of Justice in Mainland Tanzania*, First Edition, and Publisher: Nairobi, Kenya: Law Africa Publishing (K) Ltd

⁵⁰ The Criminal Procedure Act, Cap 20, R.E 2022.

⁵¹ (1958) EA

then be adduced. You will then be able to make your defense and call witnesses on your behalf⁵².

Then the Magistrate can thereafter remand the accused person or release him on bail if the offence is bailable. After the investigation is completed the police officer or any other public officer in charge of the investigation will cause the statement of the proposed witnesses in five copies to be printed out, then compiled and sent along with the police case file, to the Director of Public Prosecution or some other officer designated by him. If the DPP is satisfied that there is sufficient evidence to prosecute the accused, the DPP must draw up or direct the information to be drawn up.

Section 245 (6) of Criminal Procedure Act provides that the information and three copies of each statement of witnesses including any statement containing the substance of the evidence of the witnesses who has not made a written statement are submitted to the High Court⁵³.

After the information is filed before the High Court then the Registrar will send the copy to the Magistrate court which situated within the local resident of the accused person or where the court an accused person is first brought.

Therefore, after receiving the copy of information the court will summons the accused from the custody and if is not yet arrested the court can issue a warrant for arrest and committed an accused before the High Court for trial. The committal order is the sufficient authority for a person charge with an offence from removing him in custody and facilitating an appearance before the court and committed for his or her trial before the High court.

⁵² Criminal Procedure Act, Cap 20, R.E 2002.

⁵³ Criminal Procedure Act, Cap. 20, R.E 2022.

When the accused person appears, the magistrate's court will read and explain or cause to be read to the accused person the information brought against him or her as well as the statements or documents containing the substance of the evidence of witnesses whom the DPP intends to call at the trial.

The magistrate's court will then address the accused person in the following words as provided under section 246(3) of the Criminal Procedure Act that "You have now heard the substance of the evidence that the prosecution intends to call at your trial. You may either reserve your defense, which you are at liberty to do, or say anything which you may wish to say relevant to the charge against you. Anything you say will be taken down and may be used in evidence at your trial."⁵⁴.

Before an accused person make any statement the court must insure that he or she understand clearly that there is nothing for him or her to hope from any promise of favor and nothing to fear from any threat which may have been held out to that accused to induce him or her to make any admission or confession of his or her guilt, but that whatsoever the accused then says after this caution may be given in evidence on his or her trial notwithstanding the promise or threat.

Then the magistrate can draw the list of the witnesses including those the accused intended to call and the committed him to the High court for trial. In doing so the Magistrate may use the word: "I hereby commit the accused person to the High Court for trial at the next sessions." According to section 249 of the Criminal Procedure Act show that any person or accused who committed to the High court for trial is entitled a copy of the record of the proceedings⁵⁵

⁵⁴ The Criminal Procedure Act, Cap 20, R.E 2022.

⁵⁵ The Criminal Procedure Act, Cap 20, R.E 2022.

Finally, the accused person can be remanded into custody or release him on bail if the offence is bailable. And the records of proceedings duly signed and authenticated by the magistrate will be sent to the Registrar of High Court and other copies of the charge and proceeding will be forwarded to the DPP.

After the copies of the record of committal proceedings have been received in the High Court, the Registrar will endorse or annex a notice of trial to every Information filed and to every copy of it delivered to the officer of the court or police officer for service. The notice of trial will specify the particular sessions of the High Court at which the accused person is to be tried on the information.

The registrar will deliver the copy of the information together with a copy of notice of trial to the court or police officer and those copies of the information and notice of trial should deliver those copies to the accused the nature and the need of those copies.

If the accused person has been admitted to bail and cannot be readily found, the serving officer, should leave a copy of the information and notice of trial with someone of the accused household or at the accuser's dwelling house or with someone who took bail for the accused and if none of them can be found, affix the copy and notice to the outer or principal door of the dwelling house or dwelling houses of the accused person or of any of those person who took bail for the accused. Once the record of preliminary inquiry is transmitted to the Registrar of the High Court and forwarded to the DPP, the case is not yet before the High Court. An accused committed for trial by the High Court is properly before the High Court only after the information has been drawn and filed in the Registry of the High Court. The information must be drawn up in the name of and, signed by the DPP, bear the date

of the day when it is signed and, with modifications necessary to the circumstances of each case. Afore mentioned are procedures for committal proceedings, hence the time taken between initiations of the committal to a read trial in the High court is a breeding ground for unnecessary delay and cause torture to an accused person⁵⁶. As in the case of *Republic v. Asafu Tumwine*⁵⁷ where the court was of the view that the High court could not entertain the offence which was supposed to be subjected to committal proceedings but it was not. Basing on the above provision of the law and case law, it is well settled that the High Court cannot try the offence of murder, treason, terrorism, drug trafficking and economic offences which was supposed to undergo committal proceedings but it was not

3.2 International instruments

International instruments that protect litigants in civil and criminal proceedings include human rights and humanitarian treaties. Provisions under these treaties are often implied as right to speedy trial within a reasonable time and without undue delay to insure fair hearing and delivering of justices. Discussions of these instruments as follow

3.2.1 International Covenant on Civil and Political Rights of 1966 (ICCPR)

This is an international instrument which deals with protection of people's rights with regards to the issue of delay of trials. Under Article 14(3) (c)⁵⁸ it provides for the right to be tried without undue delay. This provision is read together with article 14(1)⁵⁹ which provides for equality before the courts of law and legally recognized tribunals. It provides that "all persons shall be equal before the courts and tribunal." Articles

⁵⁶ Aloys Rugazia(legal consultant) v Shenaz ismail Noray civil appeal 149 of 2022

⁵⁷Criminal Revision No. 1 of 2006 (unreported)

⁵⁸ International Covenants on Civil and Political Rights, of 1966.

⁵⁹ International Covenants on Civil and Political Rights, of 1966.

14(3) (c) and 14(5) are read together so that the rights to review the conviction and the sentence must be made available without undue delay. The undue delay in the meaning of these provisions base on reasonableness standard taking into consideration factors such as the gravity of offence, the complicity of the case, the parties contribution to the delay, the length of time it takes a court to reach a final decision and the inability of the state party to adduce exceptional reasons to justify delay. In addition to that article 9(3) of the convention provides for the right of an accused person to be tried within a reasonable time⁶⁰.

3.2.2 The United Nations Convention on the Rights of the Child of 1990

A number of international instruments also contain fair trial provisions, which protect against delay in the administration of justice. These instruments demonstrate a widespread acceptance of the right of speedy trial. Article 40(2) (b) (iii) of the Convention state that every child accused of violation of penal law has the right to have the matter determine without delay⁶¹. The United Nations Standard Minimum Rules for Administration of Juvenile Justice requires that each case shall from the outset, be handled expeditiously, without any unnecessary delay⁶².

3.3 Regional instruments

3.3.1 The African Charter on Human and Peoples' Rights of 1986

This is a regional human rights instrument which seeks to promote and protect human rights and basic freedoms in African continent. This Charter under article 7 (1) (d) providing that every individual shall have the right to have his cause heard within a reasonable time by an impartial court or tribunal⁶³. The provision of this Charter

⁶⁰ International Covenants on Civil and Political Rights, of 1966.

⁶¹ The United Nations Convention on the Rights of Child of 1990.

⁶² LHRC (2007) Annual Report

⁶³ The African Charter on Human and People's Rights of 1986.

seeks to regulate delay in administration of justices. The African Commission on Human and Peoples' Rights is of the concern that unwarranted delay in administration of justice would constitute a violation of article 7 of the Charter. According to article 7(1) (b) and (d) of the Convention provides about the rights to be presumed innocent until proved guilty by a competent court or tribunal and the right to be tried within a reasonable time without undue delay by an impartial court⁶⁴.

⁶⁴ The African Charter on Human and People's Rights of 1986.

CHAPTER FOUR

RESEARCH FINDINGS AND ANALYSIS

4.0 Introduction

This chapter expects to present and analyse the research findings based on the research findings from the field and some literature materials as secondary data. It intends to show out the nature and extent of delay of cases in subordinate courts, reasons for delay of cases in our courts and effects of such delays.

4.1 Situational of administration of justice in Tanzania

In Tanzania the administration of criminal justice it has different challenges especially on the serious cases such as treason, murder, economic offences and drug trafficking due to long delay of cases in our courts which affect the determination of cases on time. Therefore, determination of cases took a long period to reach a conclusion which leads to delay of justice⁶⁵.

The former Chief Justice Augustino Ramadhan while interviewed by the Africa commission of human and people's rights in 2008 about the issue of delay of cases in our courts he responded that unnecessary proceedings such as committal proceedings, corruption, lack of enough magistrates and court rooms are among the factors causing delay of cases in our courts. He went on by responding that there were many prisoners waiting for trial for too long⁶⁶. He further responds that most of the accused persons spent for five up to eight years even though there are some spent more than ten years in prisons for custody and most of these prisoners are those who are accused for

⁶⁵ V.R Makaramba, *The Practical and Legal Challenges of Justice Delivery in Tanzania: Experience from the Bench* (2012).

⁶⁶ African Commission of human and people's rights (2008) *Report on promotion mission to the United Republic of Tanzania*

murder cases and sexual offences because of delays of their cases⁶⁷. Therefore, for a person's charged with murder, treason, terrorism and economic offences they could stay in remand for a minimum of five years this is violation of the constitutional rights to the accused person.

4.2 Nature and amount of delay of serious cases

Delays in the committal of cases is a common problem that has negatives impact on the determination of justice because it is one among the obstacle in ensuring quality justice. Delay in committing cases from District courts and Resident Magistrates Courts to the High Court seen to be a major obstacle to speed delivery of justice because most of serious cases are pending in subordinates courts because they are not committed on time to the High Court for due to various reasons.

Delays in the cases has a negative impact on administering justices because it delays and violates the constitutional rights to victims especially rights to access to justices also as well as the right to be presumed innocent and the right to liberty because the accused person had to spent more in custody awaiting to be committed for trial.⁶⁸

4.3 Reasons behind for delay of cases in committal proceedings

The majority of the respondents when asked what are the reasons behinds as to why most cases for committal proceedings are delayed in the subordinates' courts to be committed for trial to the High court they gave various reasons as follows,

⁶⁷ African Commission of human and people's rights (2008) *Report on promotion mission to the United Republic of Tanzania*

⁶⁸ V.R Makaramba, *The Practical and Legal Challenges of Justice Delivery in Tanzania: Experience from the Bench* (2012)

4.3.1 Investigation

This is one of the reasons causing the delay in the committal of serious cases from subordinates' courts to High court for trial. The investigation process took a long time to complete so it lead to discontinuing the case for trial and will remain to be mentioned every day in subordinates' courts and cases are not committed to the High Court for trial because the magistrate has no⁶⁹ power to give a committal order if the investigation and preliminary inquiries are not complete. The police are an organ vested with this power to investigate by the Criminal Procedure Act.⁷⁰ But they failed to make investigation on time thus it cause the backlog of pending trial in the court and delay⁷¹. And basic challenge facing the Police Force is a lack of staff for investigation and prosecution. The investigations are compromised by poor investigation techniques, a lack of both forensic capacity and expertise at handling evidence. Insufficient communication and transport facilities and officers suffer from low pay and poor conditions this it leads to low morale, rise to corruption and abuse of power.

4.3.2 Unreasonable adjournment of cases

Always courts have a duty to verify that there are reasonable grounds for adjournment in order to avoid unnecessary delays trial. Therefore, the hearing may be adjourned to a later date if there is good reason to justify the move. Unnecessary adjournment of cases affects the right of fair trial within a reasonable time⁷².

⁶⁹ F. Kapama, *Mixed Feelings On High Court Committal Proceedings Judgment*. Tanzania (2016)

⁷⁰ S. Robins, *Addressing the challenges of law enforcement in Africa: Policing in Sierra Leone, Tanzania and Zambia* (2009).

⁷¹ T. Chitema and H. Natanael, *Fair trial: An aspect of presumption of innocence and the concept of trial withina reasonable time*, (2009)

⁷² B.D. Chipeta, *Magistrate Manual on Criminal law and Procedure: A digest of cases*. 1st Edition Published by Law Africa Pub.(T) Ltd. In Dar es salaam (2010)

4.3.3 Absence of enough committal Magistrates

Lack of enough committal magistrate contribute to the delay of committal case in subordinates courts whereby there are circumstances cases are adjourned due to the absence of the magistrate. Therefore the absence of magistrate it leads to adjournment of cases and it affect swift delivery of justice⁷³.

4.3.4 Corruption and lack of commitment

One of the challenges that lead to delay of cases in our courts is corruption⁷⁴. Moreover, some of the respondents argue that corruption and lack of commitment are among of the factors that cause delays of murder cases. In 2008 then chief justice Augustino Ramadhan while interviewed by the African commission of human and people's rights on the problem of delay of cases he responded that corruption⁷⁵. Where judicial corruption occurs, damage can be to the citizens and it violates their human rights and it cause harm to the dispensation of justice also and lowers the quality of governance⁷⁶. Therefore if there were corruption and lack of commitment it can cause the delay of cases.

4.3.5 Ineffectiveness of prosecutions side

The prosecution carries a high percentage on causing delays in committal of cases because they always come to court without being properly prepared and full investigation. Sometimes they submit that the police investigation file has nowhere to be seen, these confirmed that they are negligence in performing their duties

⁷³ V.R Makaramba, *The Practical and Legal Challenges of Justice Delivery in Tanzania: Experience from the Bench* (2012)

⁷⁴ L. Sikoi, *Corruption in the Judiciary and delays of cases in Tanzania: A case of the High Court of Tanzania, Dar es salaam District Registry Report* (2010)

⁷⁵ African Commission of human and people's rights (2008) *Report on promotion mission to the United Republic of Tanzania*

⁷⁶ L. Nwabughio, *Corruption war: Delay tactics by judicial officers hampering progress* (2016)

prosecution. Investigations are often conducted by lower ranking officers who are new to the service and inexperience. As such caliber such Officers may be insufficient in procedures, so due to inability to making quality investigation it leads to failure to complete investigation on time and causing delays of cases in our courts⁷⁷.

4.4 General Perception on delay in committal proceedings

Majority of the respondents stated that committal proceeding does not significantly benefit to the accused, because it consumes time. A committal proceeding is a good practice but it has some effects in administration of justice because it leads to cases not to be tried within a reasonable time due to delay in committal orders of the cases within a time. He went on to say that what makes these cases are delayed due to police sides are failure to conduct investigation on time.

4.4.1 Committal Proceeding are wastage of time

Some respondents comment that committal proceeding wasting of time due to long process and procedure on committal proceedings. They argue that's delays created by committal proceedings because such process it consumes time for a cases to be committed for trial. The point of a committal proceeding and preliminary inquiries is to decide whether there is enough evidence to determine whether or not the person should go to trial at all. Committal proceedings are basically the stage where the prosecution has to prove that a case is strong enough to be forwarded for a trial. But in those cases where forensic evidence is involved, the case is likely to be significantly delayed and the case could not reach the point of committal. Another area that the respondents touch is about investigation process, most of respondent they respond

⁷⁷ J.Mwalili, *Issue Concerning Prosecution in Relation on Conviction, Speedy trial and Sentencing* (2013)

that if committal proceeding was intended to protect the accused it has completely failed. The investigation process takes a lot of time to be completed, some time it takes even years to investigating a matter, so in cases the accused is under custody so he or she can spend a long time in custody awaiting his or trial.

4.4.2 Delay in Committal proceedings hinders immediate delivery of justice

Some of the respondents argued that delay in committal hinders immediate delivery of justice and cause effects to the accused person because these rules of committal proceedings it is very complicated and it have own problems which involve technical and complex rules of procedure which leads to delay of cases in subordinate courts as a results most of cases are pending before Magistrate courts and cause backlog of cases and accused person still continued to suffer in the prison awaiting for committal order to High court for hearing of his trial.

4.5 Impacts of delays in committal proceedings

Delay in proceedings it has severe impacts in the administration of justices. Delay in trials can be unfair because it leads to violation of human rights because the offender can spend more time under custody without committed for trial. The rights of accused person are not ensured if there is delay of cases. And this it's contrary to the Constitution of the United Republic of Tanzania because the fact is that there is no compensation is given to accused person after acquittal⁷⁸.

⁷⁸ S. Robins, *Addressing the challenges of law enforcement in Africa: Policing in Sierra Leone, Tanzania and Zambia* (2009).

4.5.1 Denial of accused justice

Fair trial is the main object of criminal procedure and such fairness should not be threatened interfered in any manner⁷⁹. Fair Trial entails the interests of the accused, the victim and of the Society. Thus, fair trial must be guaranteed to every accused in order to ensure rights of the accused are protected like personal liberty, fair, justice and trial of the charges against him within a reasonable time. Therefore, justice delay is a justice denial and it has negative impact to the accused person and leads to injustices⁸⁰. This occurs when the accused person is kept for a long time in custody and there is no any sign of determination of his charges against him. So any person charged with an offence has a right to be tried within a reasonable time⁸¹.

4.5.2 Deprivation of right to liberty

It can be unfair for accused person who remand custody for a long time once found not guilty of the charged offense as such time she or he spent in custody it may amount to mere deprivation of liberty. Some respondents during this study pointed out that cases were adjourned and sometimes they could not know well the causes of such adjournment thereof⁸².

4.5.3 Delay in committal proceeding Violates Human Rights

Since the main object of the trial is to determine justice and to convict the offenders and to protect the innocent therefore, there are must be a fair trial which should be heard within a reasonable time because we need to see the justices have been done⁸³.

Therefore, the right of accused to receive a fair trial such as to be tried within a

⁷⁹ Chambers of Nitin Chopra (2014) denial of fair trial is injustices to the accused

⁸⁰ G.R. Fox, *Criminal Delay as Abuse of Process* (1990)

⁸¹ G.R. Fox, *Criminal Delay as Abuse of Process* (1990)

⁸² S. Robins, *Addressing the challenges of law enforcement in Africa: Policing in Sierra Leone, Tanzania and Zambia* (2009).

⁸³ G.R. Fox, *Criminal Delay as Abuse of Process* (1990)

reasonable time was one among the human rights. Right to get a fair trial is not only a basic fundamental right but a human right also. If there is delay the right to be presumed innocent to the accused person become becomes unclear.

4.6 Research findings

committal proceeding, its foundation is in the first Schedule of the Criminal Procedure Act, the schedule sets out the offences trialed by subordinate Courts and the one that are exclusively subject to be trialed by the High Court.

Therefore, these rules of committal proceedings have their own problems which involve technical and complex rules of procedure about which leads to delay of cases in subordinate courts⁸⁴. Therefore, the study revealed that the delays are self-made by the procedures applied in courts which involve technical and complex rules. This is due to the inherited adversarial system of dispute settlement which is time consuming, tiresome and technical and also majority of people know nothing because these rules were designed to suit particular requirements of English justice system.

Also it is further observed that the delay of serious cases in subordinate courts is subject to some legal provisions governing investigations and proceedings, though it is seen that they contained *lacuna* in the sense that they do not provide for time frame within which the investigation shall be completed or the committal order shall be ready for accused person.

In the light of that lacuna the paper also reveals the reasons for such delay which is subject to institutions involved in the process of committal proceeding such as prosecution side and Committal Magistrate. According to this research it has been observed that prosecution side are the main cause of delay of serious cases in

⁸⁴ F. Twaib F, *The legal profession in Tanzania: The law and practice* Dar es salaam Tanzania university press 1997

subordinate compare with other like committal Magistrate, although in other side magistrate and other investing machine do contribute in one way or another in delay of serious cases in subordinate courts.

Therefore, committal proceeding leads to an extremely delayed process. It entails procedural spirals that consume years to exhaust before a meaningful commencement of a trial, at the end of which in the High Court a Preliminary Hearing is re-conducted with a view of organizing evidence which is a sort of procedural repetitions. And the effect of delay in committal it leads to injustice⁸⁵.

Moreover, it is observed that delay in committal proceedings it has negative effects which leads to violation of human rights, Deprivation of right to liberty if the accused person is under custody can spend a long time waiting for his trial which cause to denial of accused justice.

⁸⁵ G.R. Fox, *Criminal Delay as Abuse of Process* (1990)

CHAPTER FIVE

CONCLUSION AND RECOMMENDATIONS

5.0 Introduction

This part is going to make the proper conclusion and recommendation on how the procedure of committal proceedings should be abolished in our court systems because it has the legal impacts on the accused person.

5.1 conclusion

Courts in Tanzania Mainland have been entrusted with the responsibility of dispensing justice to individuals⁸⁶. In order to respond to the constitutional principle which requires courts to dispense justice without delay. Timely delivery of justice to individuals does not depend only on the speed the Magistrate or a Judge puts in determining a particular case but also the procedures to be followed by the Magistrate or Judge in reaching to a final and conclusive decision.

Fauz Twaib in his article⁸⁷ was of the view that procedural law governing cases in Tanzania Mainland is designed in such a way that if properly observed by courts may facilitate to reduce delay in determining suits filed before the court. However, the delay in committal cases by courts in Tanzania Mainland is caused by Magistrates, Judges, Lawyers as well as Litigants themselves. Note has to be taken that delay in determining cases facing accused persons more particularly Murder, Treason, Terrorism, Drug trafficking and Economic offences are not a direct result of a Magistrates, Judges, Advocates or Litigants but rather the procedures stipulated in the Act of parliament. This is because the Magistrate or a Judge while determining a case

⁸⁶Constitution of the United Republic of Tanzania 1977 as amended time to time Article 107

⁸⁷ F. Twaib , *Legal Empowerment of the Poor: Access to justice and the Rule of Law*

is obliged to follow the procedures laid down by the law and non-observance of the procedure by the Magistrate or the Judge may lead to the proceeding being declared nullity by the higher court as the case of *Hamis v. Republic (1993) TLR 213*⁸⁸. Procedural laws help the court in the process of determining cases filed before it by providing the manner the case may be determined and the time to be completed by the court⁸⁹. Furthermore, procedural laws respond to all questions regarding the determination of cases thus they are body of rules in which the tribunal or the court is enabled to determine individual rights and duties. Procedural laws are very important in the process of handling disputes instituted by parties hence may enable the court or the tribunal to archive deliver a decision on time.

While procedures are important for individuals to access justice in the court there is an argument that most of the procedural laws existing today especially committal proceedings have been in use for many years as a result they cause the process of determining cases difficult leading to the delay of justice to the people⁹⁰.

In some countries, court procedures have been in use for long time as a result they do not respond to the current development happening in the world. The procedural laws applicable today by courts are those procedures existed during colonialism and after independence. The world is changing technologically and the society is also changing therefore court procedures should be that which respond to these changes.

In Tanzania Mainland For example, committal proceedings are considered to be one of the oldest procedures traced from the Colonial Criminal Procedure Code⁹¹. The

⁸⁸ (1993) TLR 213

⁸⁹CMJA Conference Report (2018), *Building an Effective, Accountable and Inclusive Judiciary*, CMJA, United

⁹⁰CMJA Conference Report (2018), *Building an Effective, Accountable and Inclusive Judiciary*, CMJA, United Kingdom

⁹¹Criminal code No. 12 of 1930

procedure has been in use from 1930 to the present moment with few amendments. The procedure is conducted in the District court or Resident Magistrate court for offences involving murder, treason, terrorism, drug trafficking and economic. However, there are complaints from the people on the effectiveness of this procedure. There is no doubt that due to the technological development happening in the world today, court procedures should be that which helps the court to determine the offence within a short period of time and thus enable the accused person to achieve justice timely. In order to assess whether committal proceedings respond to the constitutional principle of undue delay in the determination of offences which pass through subordinate courts for committal proceedings.

Delay in committing cases from District Court and Resident Magistrate courts to High Court seen to be an obstacle to the speedy administration of justice. Cases are pending in our courts because they have not been committed to High Court for various reasons on time. Thus report is confined to the delay of murder cases in subordinate courts particularly Resident Magistrate's Courts and District Magistrate's Courts due to an examination of committal proceedings, one of the practices that are blamed for causing delays and violates the principles of justices because the delay in committal hinders speedy delivery of justice and rights to an accuse. Therefore, the study observed that the delay of cases for committal proceedings in subordinate courts is subject to some legal provisions governing investigations and proceedings, though it is seen that they contained *lacuna* in the sense that they do not provide for time frame within which the investigation should be completed or the committal order should be ready for accused person. Moreover, it is observed that delay in committal proceedings it has negative effects which leads to violation of human rights,

Deprivation of right to liberty if the accused person is under custody can spend a long time waiting for his trial which cause to denial of accused justice.

5.2 Recommendations

Delay of serious cases lead to violation of accused justice since justice delayed is justice denied. Therefore, government should review and update the Criminal Procedure Act of 1985 in order to set up the time limits on which preliminary inquiries and investigations to be conducted and collected. And there is a need for the law to show the limit of time for how long cases can be spent in subordinates' courts for preliminary inquiries and to be committed to High court for trial in order to avoid unnecessary delays.

The researcher also is of the view that the law governing investigations should be amended so as to insure that police officer upon conducting an investigation shall comply with the limitation of time of which investigation are to be conducted.

Other recommendations are for the specific arms of the criminal justice system since delay is caused by different factors within arms of criminal justice such as Police and the judiciary.

5.2.1 The judiciary

The study revealed that, the judiciary also played a role for the delays of serious cases even though it has been observed that prosecution side are the main cause of delay of cases for committal proceedings in subordinate compare with Judiciary, but in other side magistrates do contribute in one way or another in delay of cases in subordinate courts due to unnecessary adjournments of the cases or absent of the magistrate at the office. In order to avoid such delays, the Courts have a duty to prove that there are the reasonable grounds for the adjournment so as to avoid unnecessary delays of the

case. Therefore, hearing may be adjourned to future date if there are good reasons to justify the move otherwise to stop unnecessary adjournments because its wastage of time.

5.2.2 The police

The researcher is of the view that Police officers who deal with investigations of criminal offenses ought to perform their duties with the due care and in the ambit of the law so as to ensure that justice is not delayed in the all process of committal proceedings. They need to make investigation in time in order to assist the court to determine the cases without any delay. Since a major cause of delay in committal proceedings cases is due to police investigation, therefore investigating police officers should be trained and the government should provide necessary tools for prompt investigation of criminal cases and if there is any transfer, retirement or death of the Investigating Police Officer, other police officers within the unit should be compelled to promptly continue with a case and give evidence of the investigation in court.

The determination of criminal cases without delay is very important and this will lead to the implementation of article 107A (1) (2)⁹² by courts. However, it is obvious that the conduct of committal proceedings in subordinate courts contravene the mother law since the process cause unreasonable delay in the dispensation of justice to accused persons. In order to go hand in hand with the technological development happening today, it is time now for some court procedures which lead to unreasonable delay in the dispensation of justice to be repealed. This is because the effectiveness of the court is measured by the time used by the court in determining a particular case filed before it. Costs, energy and resources can best be used if court

⁹² The constitution of the United Republic of Tanzania of 1977 as amended time to time

procedures do not lead to unreasonable delay in the dispensation of justice to individuals. This article is aimed to show how committal proceedings is conducted in Tanzania Mainland for offences which are not trialed by subordinate courts and how it causes unreasonable delay in the dispensation of Justice to accused persons facing Murder, treason, terrorism, drug trafficking and economic offences hence contravening constitutional principle which require courts not to delay the determination of cases to persons facing criminal offences.

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