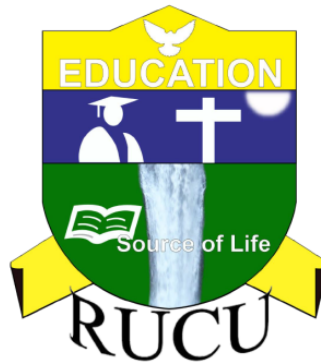


RUAHA CATHOLIC UNIVERSITY



FACULTY OF LAW

**THE RIGHT TO BE HEARD: AN ANALYSIS OF THE POWER OF THE CHIEF
JUSTICE, JUDGES OF THE HIGH COURT AND THE HIGH COURT IN
DISCIPLINING ADVOCATES IN TANZANIA**

**A Research Paper Submitted in Partial Fulfillment of the Requirements for the
Award of the Bachelor of Laws Degree (LL.B) of Ruaha Catholic University**

By;

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August, 2019

CERTIFICATION

The undersigned certifies that she has read and hereby recommends for acceptance by the Ruaha Catholic University a dissertation entitled “The Right to be Heard: A Critical Analysis of the Power of Chief Justices, Judges of the High Court and the High Court in Disciplining Advocates in Tanzania.” in fulfillment of the requirements for the award of Degree of Bachelor of Law

Signed on.....day of2019

.....

Ms Naomi Gichuki

Supervisor

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DECLARATION

I, Patrick Steven, do hereby declare that this research paper is the result of my own original work, that the same has not been previously and is currently not to be submitted to any other university for a degree award to any candidate therein.

Signed onDay of2019.

.....

Patrick, Steven

Researcher

DEDICATION

I would like to dedicate this research to my lovely parents, relatives and friends, who in one way or another have contributed much in the completion of this research work. May our Beloved GOD's wonderful blessings be with you all forever and ever.

ACKNOWLEDGEMENTS

This research work has been completed after due assistance from many people, to whom I would like to express my sincere thanks and appreciation. These people have tried their level best in extending both their moral and material support for facilitating me in writing this research.

To start with I thank God the Almighty for giving me this gift of life and strength to put up with all challenges which I faced since I started my first year in 2013 until now that I am in my fourth year.

I also wish to express my thanks to my lecturer and supervisor Ms Naomi Gichuki who showed keen interest in my study and assisted me generously and tirelessly, she instructed me since I was drafting a proposal for this work. Moreover, she gave me valuable guidance, supervision and assistance in preparation of this work.

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LIST OF LEGAL INSTRUMENTS

DOMESTIC STATUTES

The Constitution of United Republic of Tanzania (amended time to time) of 1977

The Advocate Act, Cap 341 R:E 2002

The Advocate (Disciplinary and Other Proceeding) Rules G.N.No.135 of 1955

The Advocates (Professional Conduct and Etiquette) Regulations, 2018

The Judicial Administration Act,2011

LIST OF CASES

Ronald V. Worsley (1967) All E.R.993

Sittingbourne and Sheerness R/y Co V. Lawson (1886)

National Central Cooperative V. Ajay Kumar, A.I.R 1994, S.C.39

Judge in Charge, High Court at Arusha and A.G. V. Nin Munuo Nguni [2004]TLR.44

In the State (Irish Pharmaceutical Union) V. Employment Appeals Tribunal[1987]ILRM

Abbas Sherally and Another V. Abdul SHM Fazalboy, Civil Appeal No 133 of 2002, Court of Appeal of Tanzania at Dar es salaam (unreported),

DPP V. Sabinis Inyasi Tesha and Another [1993] TLR 237

Bank of Tanzania V. Said Marinda and Another, Civil Appeal No 74 of 1998, Court of Appeal of Tanzania at Dar es salaam (unreported)

William Malaba V. R, Criminal Appeal no 5 of 2005, CAT at Mwanza(Unreported)

Board of Education v. Rice and Others [1911] A.C. 179 at 181

LIST OF ABBREVIATIONS

AG Attorney General

TLR Tanzania Law Report

ADC Advocate Disciplinary Committee

TLS Tanganyika Law Society

ABSTRACT

This work focuses on analyzing the power of the Chief Justice, Judges of High Court and the High Court in disciplining advocates in Tanzania in relation to the right to be heard. It is argued that, advocates have the obligation to conduct themselves with the utmost good faith in dealing with their clients, Court and others. In addition, advocates should undertake an implied duty upon retention to the exercise of his profession a reasonable degree of care and skills, and failure to observe that he or she will be subjected to disciplinary action.

In Tanzania the forums responsible for dealing with advocate's discipline are the Advocate's Disciplinary Committee as well as the Judges of High Court, the Chief Justice and the High Court, which is the focus of this study. However, many legal scholars comment on its efficacy in dealing with advocate's discipline, particularly on the issue of right to be heard when an advocate is disciplined by the Chief Justice, Judges of the High Court or the High Court.

Therefore the forums which deals with disciplining advocates especially the power vested to Chief Justice, Judges of the High Court and the High Court should ensure that, observes the principle of natural justice and the constitutional right of advocates, in the sense that advocates who are alleged to conduct a certain misconduct should be afforded with the right to be heard before being punished. Generally this research focuses on the critical analysis of the power of the Chief Justice, Judges of the High Court and the High Court in disciplining advocates in Tanzania.

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CHAPTER ONE

1.1.Introduction

It is a constitutional right that every person should be afforded an opportunity of being heard, when facing any allegations be it criminal or civil in nature. This entails that before being punished for a certain alleged offence a person must be given a right to be heard, this has been provided under Article 13(6)(a).¹ Right to be heard is not only a constitutional right but also one of the significant principles of natural justice, which provide that before making a decision you have to hear the other party “*audi alteram partem*”.² This is a Latin phrase which means, listen to the other side or let the other side be heard as well. It is the principle that no person should be judged without a fair hearing in which each party is given the opportunity to respond to the evidence against them.³

This research intend to critically evaluate of Section 22 of Advocate Act, Cap 341, which gives power to the Chief Justice, Judges of the High Court to admonish any Advocate, to suspend him from practice, or to make an order of removing his name from the roll, as well as the power of Judges of the High Court to suspend advocates temporarily pending reference to the High Court, if he is of the opinion that the Advocates conduct amount to professional misconduct.

¹ The Constitution of United Republic of Tanzania, 1977

² https://www.justiceforyou.org>natural_justice(Accessed on 29th June 2019)

³ <https://www.legalserviceindia.org.com>legal>artic...>(Accessed on 28th July 2019)

1.2. Background of the Problem

The history of the legal profession in Tanzania emerged during colonial rule. Before colonialism there was absence of specialized institutions and personnel for the administration of Justice. The disputes were solved through traditional forms of mediation, arbitration and conciliation. And therefore professional lawyers such as Advocates did not exist.⁴

In the late 19th century, the German Crown took the power over Tanganyika, and there after the administration of Justice in Tanganyika came into contact with professional lawyers. These professional lawyers were governed entirely by German Laws, since they had qualified in Europe and decided to travel and practice within their countries' colonies in Africa. At this time the roles of lawyers were very minimal and the few legal practitioners were scattered in various parts in Tanganyika. Their role and functions however were limited to serving Europeans.⁵

After the First World War, the British took over Tanganyika as a Protectorate Colony. Tanganyika found itself a recipient of the English Common law, through Tanganyika Order in Council of 1920. The earliest rule to govern the legal profession in Tanganyika was the Legal Practitioners Rules of 1922. The rules were imported via India⁶ where it had been long established, and was supplement to Tanganyika Order in Council which was the first Tanganyika's Constitution, in order to have legal enforcement.⁷

⁴ F. Twaib, *Legal Profession in Tanzania*, Law Africa Publishing LTD, Dar es salaam, 2008,16

⁵ T.O. Elias, *The Nature of African Customary Law*,The University of Manchester at University Press, Manchester, 1956, PP 222-238

⁶ *Supra note 1*

⁷ F. Twaib, *The Legal Profession in Tanzania Law and Practice*, Law Africa Publishing LTD, Dar es salaam, 2008, p 21

The Rules set out the standards of ethics and conduct which advocates were to observe in dealing with their clients, Court and others. Other matter relating to the activities of legal practice were covered by legislations other than legal Practitioners Rules, among them were Advocate Remuneration Ordinance and legal Instrument (Restriction on Preparation) Ordinance. Both of them were repealed in 1954 by the Advocate Ordinance, Cap 341.⁸

In 1990 and 1991 several other measures were taken to tighten the grip and further enhance discipline among Advocates and Judicial Officers. These include the amendment of the Advocates Ordinance; Cap 341 of the Laws.⁹ The previous Advocate Act before amendment to mean the Advocate Act, No 12, 1990, the Act provided power to Advocate Disciplinary Committee (ADC) in disciplining advocates when they committed misconduct.¹⁰ The amendment of the Advocates Ordinance was meant to give powers to Chief Justice, the Judges to suspend advocates suspected of causing delays in the hearing of cases in which they are representatives of contending parties.¹¹

Advocates, through the Tanganyika Law Society (TLS) in which all practicing lawyers are members, protested this amendment because they see it as unconstitutional. Tanganyika Law Society is the Bar association of Tanzania Mainland, founded in 1954 by an Act of Parliament, the Tanganyika Law Society Ordinance 1954.¹² The Tanganyika Law Society is currently governed by Tanganyika Law Society Act, Cap 307R.E 2002 which repealed the earlier legislation.¹³ One among the roles of TLS is to

⁸ *Idem*, p22

⁹ Advocate (amendment) Act, No 12 of 1990

¹⁰ <https://www.tzaffairs.org> (Accessed on 19th June, 2019)

¹¹ S.H. Bukururu, *Judiciary and Good Governance in Contemporary Tanzania; Problems and Prospects*, Michelsen Institute, Norway, 1995 P.22

¹² <https://www.ealawsociety.org>the-tanganyika> (accessed on 27th July 2019)

¹³ *Ibid*

provide legal education to its members, making sure that all members are complying with ethical rule and conducts as provide by the governing law. When the law was proposed they met the Attorney General and urged him to withdraw it, contending that the law was unconstitutional and that it would lead to anarchy in courts. The Attorney General told them that the basic aim of the law was to instill discipline and control in the profession (Daily News, 2nd April 1990),the law was ultimately passed and is still used up to day.¹⁴

Thereafter, the Advocate Ordinance passed various amendments in order to reshape the structure of Legal Profession, surprisingly the current Advocate Act failed to cure the problems faced in disciplining of advocates, particularly on the denial of the right to be heard when they are disciplined by Judges of High Court and The High Court, due to such a thing it infringe the constitutional right of advocates, hence the gist of this research.

1.3. Statement of the Problem

It is provided under the Constitution that, when the rights and duties of any person are being determined by the court or any other agency, that person shall be entitled to a fair hearing and to the right of appeal or other legal remedy against the decision of the court or of the other agency concerned.¹⁵

Similarly the rules of natural justice provide that before making a decision you have to hear the other party “*audi alteram partem*”. Section 22 of Advocate Act, Cap 341, gives power to the Chief Justice, Judges of the High Court to admonish any Advocate, to suspend him from practice, or to make an order of removing his name from the roll, as

¹⁴ *Idem*, p23

¹⁵ Art 13 (6)(a) of the Constitution of United Republic of Tanzania of 1977

well as the power of Judges of the High Court to suspend advocates temporarily pending reference to the High Court, if he is of the opinion that the Advocates conduct amount to professional misconduct, does not dispense with the principles of natural Justice, and contrary to Constitutional rights.

Therefore the research set out to examine the extent to which the powers of the Chief Justice, Judges of the High Court and High Court to discipline advocates contravene both Constitutional right and rules of natural justice.

1.4. Literature review

To make the work comprehensive, the researcher reviewed a number of written works where authors tried to explain the issues of professional conduct and ethics for lawyers. They pin point the challenges on the matter of laws and rules which regulate the legal profession, which is directly connected with the issue of right to be heard. Below is a list of the consulted literature.

Mtavangu, V,¹⁶ discusses in detail the duty advocates owe to the Court. He contends that it is not disputable that the lawyer, especially an advocate is an officer of the Court. Thus has to pay allegiance to the Court to which he was admitted or which created him. As an officer of the Court, the advocate may also be disciplined by the Court for misconduct particularly those committed within the Court Premises. The work does not discuss whether the disciplinary procedures taken by the Court against an advocate are Constitutional. This research addresses that gap in question.

¹⁶V.Mtavangu, *Balancing a duty to the Court and to the Client : A dilemma of Legal Practice in Tanzania*”, Open University Law Journal, 2013, Vol 4, P.150

Mirindo, F,¹⁷ discusses the issue of the right to be heard, the author discusses in details the right of fair hearing in which any individual is entitled to when his or her right is being determined by a competent legal, judicial or quasi-judicial authority. He contents that, there is a need to adhere to the right of fair hearing before passing any decision. The individual is entitled to be given notice about the charge or allegations, opportunity of tendering documents as well as the right to object against evidence tendered to him. However he does not address the power of Chief Justice, Judges of High Court and High the Court in disciplining Advocate. The current research intends to research on the situation that advocates are also entitled to the right of being heard when they are subjected to disciplinary action by the Chief Justice, Judges of High Court and the High Court, which is not provided by the Advocate Act Cap 341.

Twaib, F¹⁸, discusses in details the concept of professional conduct, ethics and discipline of Advocates. The author also challenges the power of Judges and the High court to admonish any advocate or to suspend him from practice or make an order of removing his name from the roll if he is of the opinion that the conduct of advocate amounts to professional misconduct .To him that contravene rules of natural justice and create unnecessary infringement upon constitutional rights, since the decision is made without any hearing from the advocates.

Although the author contributes in addressing the problems raised by the power of Judges and the High Court in disciplining advocates, particularly on the issue of right to be heard, there is still a gap on the literature, since it does not clearly show how the

¹⁷F.Mrindo, *Administration of Justice in Mainland Tanzania*, Law Africa Publishing LTD, Dar es salaam, 2011,63-64

¹⁸F.Twaib, *The Legal Profession in Tanzania Law and Practice*, Law Africa Publishing LTD, Dar es salaam, 2008, p 249-276

problem should be solved as well as the reasons which make the problem remain unsolved despite several amendments of the laws regulating the professional conducts of advocates in Tanzania.

Shivji, I.G,(et al),¹⁹ discusses the supremacy of the Constitution by arguing that the Constitution is the basic norm of the land and the fundamental law under which other laws of the Country are required to conform. They went further by discussing the consequences that arise when a law or any action which do not conform to the Constitution principles. They contents that any law or action which does not conform to the Constitution is null and void in law, and the actions or decisions obtained by virtue of the said laws are also null and void.

Despite the fact that, the authors did not talk in connection with the power of Chief Justice, Judges of High Court and High Court. This knowledge obtained from this literature tells that non compliance with the Constitutional principles by any law, any decision made from that law is fatal and the same will be null and Void.

Sunita, Z,²⁰ discusses the principles of natural justice particularly on the rules against bias (*nemo judex in causa sua*) and the rules of hearing (*audi alter am partem*). The author discusses the rule of fair hearing by arguing that no one should be condemned unheard in any administrative authority acting in a quasi-judicial manner. The writer contents that the rule insists that before passing the order or Judgment against any person, the reasonable opportunity of being heard must be given to him. He must be given information as to the charges against him and should be given opportunity to submit his explanation thereto.

¹⁹I.G.Shivji, *Constitutional Law and Legal System of Tanzania*, Mkuki na Nyota, Dar es salaam,2004,37

²⁰Z.Sunita, *Training Package on Administrative Law*, University of Kashmir, Srinagar City Law,2007,75

The author does not explain clearly the reason behind adhering principles of natural Justice, rather than insisting its applicability in Judicial and Quasi Judicial proceedings. The said gap has being covered by this research, specifically in connection with the power of Judges in disciplining advocates.

Bukurura, S.H,²¹ explains the power of Judges to suspend advocates who commit misconduct, such as delaying in hearing cases to which they represent different parties. The author contends that the advocates through the Tanganyika Law Society in which all practicing lawyers are members protest the said power on the ground that the power is unconstitutional and that leads to anarchy in court. Despite that, the author does not explain the way forward in solving the problem.

1.5. Research questions

The researcher is guided by research questions given below.

- (1) Whether, the Power of the Chief Justice, Judges of High Court and the High Court to discipline advocates contravenes both Constitutional rights and the rules of Natural Justice;
- (2) Whether a denial of a right to fair hearing renders the decision void in law;
- (3) Whether the limitations of appeal against the decision of the Chief Justice, Judges of High Court, and the High Court violate the right to appeal guaranteed by the Constitution;
- (4) Whether disciplining advocate without adhering to the principles of Natural Justice amounts to procedural impropriety.

²¹ S.H.Bukurura, *Judiciary and Good Governance in Contemporary Tanzania; Problems and Prospects*, Michelsen Institute, Norway, 1995, 22-23

1.6. Objectives of the study

1.6.1. General Objective

The general objective of this research is to assess whether the power of the Chief Justice, Judges of the High Court and the High Court in disciplining Advocates in Tanzania, contravene the right to be heard.

1.6.2. Specific Objectives

- (1) To assess whether the power of Chief Justice, Judges of High Court and High Court to deal with advocates discipline offends both Constitutional right and rules of natural Justice.
- (2) To evaluate whether a denial of a right to fair hearing renders the decision of the Chief Justice, Judges of the High Court and the High Court in disciplining Advocates void in law.
- (3) To analyze whether the limitations of appeal against the decision of Chief Justice, Judges of High Court, and High Court violate the right to appeal guaranteed by the Constitution.
- (4) To determine whether to discipline advocates without adhering the principles of Natural Justice amount to procedural impropriety.

1.7. Significance of the study

The significance of this research is to the Legal Profession, and Society at large, in the sense will help to create a useful source of reference for further studies in relation with the power of the Judges to discipline advocates as well as the legal professional and ethics.

1.8. Research methodology

1.8.1 Sample Size and Sampling Technique

Sample size refers to the number of items to be selected from the universe to constitute a sample. Also a sample can be defined as a subset of population that is selected for investigation purpose. It involves a process where a researcher extracts from a population a number of individuals so as to present adequately the large group.²² The researcher used purposive sampling in selecting respondents which is a non-probability sample that is selected based on characteristics of a population and the objective of the study. Purposive sampling is also known as judgmental, selective, or subjective sampling.²³

The study population for purpose of this research was twenty two (22) respondents, twenty practicing advocates (20) and two Judges of the High Court (2). Out of this target a total of sixteen (16) out of twenty two (22) respondents participated in the study. The selection of respondents was done purposely in connection to the research title simply because the respondents provided the relevant information with respect to the data that the researcher wanted to collected from the field.

1.8.2. Area of study

This research was conducted in Iringa region. There are various notable reasons which cause the researcher to opt for this choice. Among the reason is that it is a place where the researcher lives and studies and also availability of libraries such as Ruaha Catholic University Library and Iringa University Library, but also conducting a field

²² C.R,Kothari, *Research Methodology: Methods and Technique* (2nd ed), New Age International Publishers, New Delhi, 2004, 59

²³ *Ibid*

research mainly for advocates and Judges of the High Court at Iringa. The reason behind for choosing respondents who are advocates and judges is that, with respect to this research the assessment will be done on the powers of judges in disciplining advocates and hence judges and advocates are proper respondents in collecting data, and for that reasons he did not incur too much cost in finding data connected to the study.

1.8.3 Methods of data collection

To ensure that all the objectives of this research are fulfilled the researcher will rely on Primary and secondary data, including cases, text books, journals and articles.

1.8.3.1. Primary method of data collection

A primary method of data collection is done when the researcher is collecting the data required from the field that primary data are original observations collected by researcher or his agents for the first time.²⁴ Under this method of data collection the researcher will employ interview in collecting data.

Interview

Refers to the meeting or conversation in which a writer or reporter asks questions of one or more persons from whom material is sought for a certain purpose.²⁵ The researcher used this method of data collection due to the fact that, it help a researcher to get the intended information in details. It helps a researcher to be flexible in asking questions and for that reason it is easy for the researcher to have clear information. Also interview help a researcher to get instant response for the questions that will be asked.

²⁴ Y.K.Singh & R.B. Bajpai, *Research Methodology: Data Presentation*, A.P.H Publishing Corporation, DaryaGanj, New Delhi, 2005, 123

²⁵ <https://www.utsa.edu.org/hr/docs/InterviewQuestions> (Accessed on 12th June 2019)

The researcher used open ended questions in interviewing respondents who are Judges and practicing advocates. The use of open ended questions was employed in order to get more details from respondents since it does not limit in giving answers. The respondents were chosen simply because they are the right respondent with regard to the research title, and therefore due to that reason, the researcher is on the view that respondents are proper party to ensure that the research is conducted accordingly.

Apart from research questions, the following are other questions that were asked during interview, what is the meaning of right to be heard?, what kind of misconduct that causes the Chief Justice Or Judges of the High Court to punish advocates?, what is the rationale of including the Chief Justice and Judges of the High Court in disciplining advocates while there is a special disciplinary committee for disciplining advocates? and the last question is, what is your opinion towards the power given to the Chief Justice and Judges of the High Court under section 22 of the Advocate Act, Cap 341, does it infringe the constitutional right and human right of advocate?.

1.8.3.2 Secondary method of data collection

A secondary source refers to the already obtained and recorded data, including laws, cases, policies, reports books and newspapers²⁶. This method of data collection will be employed in order to get different ideas from different authors with respect to the research questions. The sources employed are not limited to internet sources especially Google where different books and Journals are published. However apart from Google there is also library especially Ruaha Catholic University library and Iringa University library which also will help together the information.

²⁶ *Ibid*

1.9. Scope of the study

The research focuses on Critical analysis of the Power of Chief Justice, Judges of the High Court and the High Court in disciplining advocates, particularly on the issue of right to be heard. It is also within the task of this work to see how the existing laws are addressing the problem and their deficiencies. The area of the study took place in Iringa Municipal, for a reason that it was easy for the researcher to get the required data.

1.10. Limitation of the study

The researcher faced challenges in getting the information from judges, however this did not hinder the research from being conducted, since the researcher collected information through interview from practicing advocates in Iringa since advocates are officers of the court, due to that the research was conducted accordingly.

CHAPTER TWO

THE CONCEPTUAL FRAMEWORK ON DISCIPLINARY POWER OF CHIEF JUSTICE, JUDGES OF HIGH COURT AND HIGH COURT.

2.1. Introduction

The chapter will explain in details the power of the Chief Justice, Judges of High Court and the High Court in disciplining Advocates. It looks on other sources apart from the statutes. The researcher will start by discussing some of the key concept used in this chapter, procedures as well as the rationale of the disciplinary power of the Chief Justice, Judges of High Court and the High Court.

2.2 Right to be Heard

This entails the chance to appear before a court or tribunal to present evidence and argument before being punished by government or judicial authority. An opportunity to be heard before penalty or punishment is imposed for contempt is an indispensable essential to the administration of due process of law as contemplated by the constitutional inhibition.²⁷ The right to be heard requires that the person to be affected by the decision should be briefed of the case facing him. Also the person should be given the chance to face his accusers. In *Board of Education v. Rice and Others*²⁸ Lord Loreburn held that

²⁷ A.C. Hutchinson, *Legal Ethics and Professional Responsibility*, Irwin Law, Toronto, 2006, 17

²⁸ Board of Education v. Rice and Others [1911] A.C. 179 at 181

“a tribunal trying to ascertain facts in a matter before it: ... can obtain information in any way it thinks the best, always giving a fair opportunity to those who are parties in the controversy for correcting or contradicting any relevant statement”.

Fair hearing includes three elements namely notice, Production of evidence, and right of opponent to object to the evidence tendered²⁹.

2.2.1. Notice

It is important that, a proper hearing must afford the affected party a notice to show cause against the proposed action and seek his explanation. Thus it is an important requirement that a person against whom an allegation is made should be informed of a case against him. The notice of the charge should be clear to enable a person to get sufficient information so as to determine the nature of the charge.³⁰

Hearing must always include ‘a fair opportunity to those who are parties in the controversy for correcting or contradicting anything prejudicial to their view. In *Kanda v. Government of Malaya*³¹ Lord Denning inter alia said that;

“if he right to be heard is to be real right worth anything, it must carry with it a right in the accused man to know the case which is made against him. He must know what evidence has been made affecting him; and then he must be given a fair opportunity to correct or contradict them”.

Even if the statute did not have provision about giving of notice, if the order to be imposed will adversely affect the right of an individual, notice must be given. Notice

²⁹ *Ibid*

³⁰ F.Mirindo, *Administration of Justice in Tanzania Main Land Tanzania*, Africa Publishing Ltd, Dar es salaam, 2011,63

³¹ *Kanda v. Government of Malaya* [1962] AC 322

need to be clear, specific and unambiguous and charges should be not vague and uncertain. Sufficient notice of a charge is one of the important requirements in hearing. In *R v. University of Cambridge*³² for example, Dr Bentley was deprived of his degrees by the Cambridge University on account of his alleged misconduct without giving any notice or opportunity of hearing. The Court of King's Bench declared the decision of the University to be null and void due to want of notice.

A notice should also give an individual sufficient time to prepare his or her defense and also give a party reasonable opportunity to comply with the requirements mentioned there in. Thus in *State of J & K v. Haji Vali Mohamed*,³³ a 24 hour notice to dismantle a structure alleged to be in a depilated condition is not proper and the notice is not valid. Also where a notice regarding one charge has been given the person cannot be condemned of a different charge for which no charge has been given to him.

There is no prescribed form in which notice should be, the form and adequacy of notice vary according to the nature of the proceeding. The aim of notice is to give an individual the opportunity to defend his case so if an individual knows the nature of the charges or allegations so the formal defect will not invalidate the notice because the essence of the notice is to give information of the case to the other party³⁴.

2.2.2. Production of evidence

A Court must afford a Party to a case an opportunity to produce all evidence to support his case. The rules of procedures have been designed to enable the Court to help the party to secure the attendance of witness and to produce document in the Court³⁵.

³² *R v. University of Cambridge* (1723) 1 Str 757: 93 ER 698

³³ *State of J & K v. Haji Vali Mohamed* (1972) 2 SCC 402

³⁴ *Ibid*

³⁵ *Ibid*

Refusing of giving a litigant a chance to call his witness to testify amounts to a refusal of the right to be heard.³⁶ The right of an accused to call his witness as an aspect of the right to be heard aims also to ensure equality before the Law.³⁷ Therefore in order to determine that justice is done a suspect of a certain crime before the tribunal or court of law must be afforded an opportunity of adducing the evidence to support his case.

2.2.3. Right of Opponent to Object to the Evidence Tendered

It is a fundamental Principle of the right to be heard that no evidence may be relied upon against a party without giving him the opportunity of commenting on and rebutting such evidence.³⁸ Where evidence is withheld from the opponent but the Court still took it into account in reaching its decision, the proceeding would not be described as Judicial, where a witness testified in Court, there is a right to cross examine such witness.³⁹

2.3. Meaning of Professional Misconduct

A Profession is an occupation requiring extensive education or specialized training.⁴⁰ Etymologically the term gained prominence in the 18th and 19th centuries and it is closely related with occupation possessed by a person for performance of certain task demands certain qualifications and Standards.⁴¹

The qualifications entail the minimum appropriate and accepted conduct. For instance the legal profession involves the duties that the lawyers owe to one another, to

³⁶ Andrea Salimo V. Ernest Msanjila, Civil Appeal no 1 of 2007, High Court of Tanzania at Dodoma (unreported)

³⁷ Richard Mebolokini V. R. Criminal Appeal no 58 of 1998 High Court of Tanzania at Arusha (unreported)

³⁸ F. Milindo, *Administration of Justice in Tanzania Mainland*, Law Africa Publishing Ltd, Dar es Salaam, 2011 64

³⁹ Kubulofwa Mwakalile and 11 others V. R [1980] TLR 44, P.145

⁴⁰ <http://www.microsoftencartadictionary/professionalmisconduct/> (Accessed on 12th June 2019)

⁴¹ F. Twaib, *The Legal Profession in Tanzania Law and Practice*, Law Africa Publishing LTD, Dar es Salaam, 2008, 13

clients, to the Court and General Public. Some are written while many others have evolved over years of constant observance and practice like dress code and dignified conduct.⁴²

The Legal profession can be referred to as practice of law by duly qualified person according to the laws as obtained in a particular jurisdiction. It always seeks to uphold the code of honor, in which course it imposes various rules and principles together with regulations to ensure that the ultimate honor and nobility are promoted and maintained.⁴³ The Regulations and rules have been established so as to govern the general conduct and behaviors of legal practitioners. Together these regulations serve as protector of the integrity of the profession, protector and promoters of administration of justice together with protection of the general public against legal professional malpractices.⁴⁴

To be accepted as a legal professional one should conform to those qualifications and standards employed by various professional regulations, rules and guidelines. The breach of the professional Standards amount to Professional Misconduct and attracts punishment.⁴⁵ Therefore Professional misconduct is to conduct or to practice against the prescribed qualifications and Standards, or to behave different from what is prescribed in the moral, ethical and professional code of conduct.⁴⁶

In other way it means to conduct in a lawyer's professional capacity that tends to bring discredit upon the legal profession including, violating or attempting to violate one of the rules of professional conduct or a provision of the Advocates Act or its regulation

⁴² A.O. Weda, *The Ideal Lawyers*, Nairobi Law Africa, Nairobi, 2014, 43

⁴³ *Idem*

⁴⁴ Twaibu, F; *Legal Profession in Tanzania*, Law Africa Publishing LTD, Dar es salaam, 2008

⁴⁵ A.O. Weda, *The Ideal Lawyers*, Nairobi Law Africa, Nairobi, 2014, 435

⁴⁶ <http://www.businessdictionary.com/definition/professional-misconduct.htm> (Accessed on 13th June 2019)

or by laws. Knowingly and willfully assisting or inducing another Advocate to violate or attempt to violate the rules of professional conduct or a provision of the Advocates Act or its regulations and by-laws.⁴⁷

It entails that the conduct tends to misappropriating or otherwise dealing dishonestly with a client's or a third party's money or property; engaging in a conduct that are prejudicial to the administration of justice; stating or implying an ability to influence improperly a government agency or official and or knowingly and willfully assisting a judge, magistrate or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other laws⁴⁸.

Apart from the discussion concerning professional misconduct below are other important concepts to be explained, including meaning of advocate, Judges and the Chief Justice.

Advocate is a person who speaks for another person for a reasonable cause or for an organization in order to persuade others.⁴⁹ The law defines an Advocate as any person whose name is duly entered upon the roll.⁵⁰ Roll means the list of Advocates kept by the Registrar of the High Court of Tanzania in accordance with the provisions of Part IV of the Act.⁵¹ In order for one to be eligible for enrolment, one needs to possess certain qualification both academic and professional and passes certain interview conducted pursuant to section 8 of the Act.⁵²

⁴⁷ H. Shonga & P. Bohare, *Professional Misconduct by Advocate and its Impact in Administration of Justice*, Dissertation submitted in Partial Fulfillment of the Requirement in Bachelor of Law, Tumaini University, 2008, 25

⁴⁸ *Ibid*

⁴⁹ D. Oran, *Oran Dictionary of law*, Delmar Cengage learning, New York, 2008, 19

⁵⁰ Section 2 of *Advocate Act*, Cap 341

⁵¹ *Idem*

⁵² to be Advocate first, you have to acquire certificate of LLB from recognized University as per section 8(1)(a)(i) of cap 341, then you have to attend to the Law school of Tanzania to get post graduate diploma

The Judge means a person, who runs a court room, decides all legal questions and sometimes decides entire factual question.⁵³ It is also defined as a Public Official appointed to hear and decide legal matters in the Court.⁵⁴ Under the law a Judge of High Court is the person who is qualified and works in the High Court of Tanzania in accordance with the provisions of Article 109 of Constitution of United Republic of Tanzania.

The Chief Justice is appointed by the President in accordance with the provision of Article 118 of Constitution of United Republic of Tanzania. The Chief Justice is the head of Court of Appeal and Judiciary.⁵⁵ “In the exercise of powers of supervision, the Chief Justice may perform the following functions, call for any Judicial Officer to submit returns of disposition of cases within a specified period, receive and investigate any complaint relating to the disposal of any case, take any such measures as may be necessary to address any matter which is subject of a complaint or recommend that any matter which is subject of complaint, be referred to the commission, nevertheless the Chief Justice may, in relation to the management of the Judiciary, delegate any of the power and functions to a Justice of Appeal, Jaji Kiongozi or a Judge In-charge”.⁵⁶

in legal practice as per S.12 of The Law school of Tanzania, and thereafter you have to Make a petition to Chief Justice, telling him who are you. Attach all required documents as per S.8(2) of cap 341, then, Appear to Chief Justice for assessment, as per S.8(3) of cap 341, and Chief Justice will sent notice to registrar of High Court if you were admitted, then the name the name will be entered in the ROLL as per S.8(4)of cap 341, then you have to Appear to the ceremony to be given certificate of admission, thereafter you have to Apply practice certificate to the Registrar as per S.34 and 35 of cap 341, and finally you become a legal Practitioner (Advocate).

⁵³ D. Oran, *Oran’s Dictionary of the Law*, Delmar Cengage learning, New York, 2008, 284

⁵⁴ B.A. Carner, *Black’s Law Dictionary*, P. 916

⁵⁵ Article 118 of The Constitution of United Republic of Tanzania

⁵⁶ Section 24(2)and (3) of The Judiciary Administration Act, 2011

2.4 The Advocate Committee

This is an organ that deals with hearing of allegations of professional misconducts or malpractice against practicing advocates in Tanzania mainland. The committee is established under section 4 of the Advocates Act.⁵⁷ The committee is composed of three members who are Judge of the High Court nominated by the Chief Justice, the Attorney-General, or the Deputy Attorney General or Director of Public Prosecution (DPP) and a practicing advocate nominated by the Council of the Law Society.⁵⁸ The Committee is chaired by the Judge nominated and decisions are made by majority.⁵⁹

Any person who is a victim of advocate's professional misconduct or malpractices is required to report the alleged misconduct to the Attorney General. The Attorney General may act upon information brought in any manner whatsoever.⁶⁰ The Committee has jurisdiction to hear and determine any application by an advocate to procure the removal of his name from the Roll, any application by any person to remove the name of any advocate from the Roll or any allegation of misconduct made against any advocate by any person.⁶¹

In making any decision the Committee follows some procedures stipulated by the law. The procedures of the Committee are provided in the Advocates (Disciplinary and Other Proceedings) Rules.⁶² With respect to the rules, an application to the Advocate Committee to remove the name of an advocate from the Roll or to require an advocate to answer allegations of professional misconduct shall be in writing under the hand of

⁵⁷ Section 4 of The Advocate Act, Cap 341 R.E 2002

⁵⁸ *Ibid*

⁵⁹ *Ibid*. According to practice the Attorney General nominates the DPP to preside over the Committee's proceedings

⁶⁰ Section 11 of The Advocate Act, Cap 341 R.E 2002

⁶¹ *Ibid*, Section 13(1)

⁶² G.N.No.135 of 1955 was made under section 14 of Advocate Act, Cap 341

applicant in Form I set out in the Schedule to the rules and shall be sent to the secretary of the Committee together with an affidavit by the applicant stating the matter of fact on which he relies in support of his application.⁶³

2.5. Disciplinary Powers of the Chief Justice, Judges of High Court and the High Court

The jurisdiction of Advocate Committee in matter of disciplining advocate is not exclusive, since section 22 of Advocate Act gives the Chief Justice, Judges of the High Court and the High Court certain powers of discipline Advocates.⁶⁴ Under such power advocate can be admonished, suspended, or his name ordered being removed from the roll.⁶⁵

That happens when the Judge of the High Court believes that the conduct of advocate amount to professional misconduct, to mean that an Advocate has failed to oblige with professional standards.⁶⁶ The professional standards want an advocate not to mislead or misguide the Court, as well as he must resist all attempts of distortion.⁶⁷

The advocates as officers of the Judiciary must ensure that they act within the law, in such a way that they respect the fellow advocates, they must avail themselves of legal procedures in a legitimate and non-abusive way, they must uphold the legal process generally, and they must act at all the times in a way that does not bring the administration of justice into disrepute.⁶⁸

⁶³ *Ibid*, Rule 3

⁶⁴ F. Twaib, *The Legal Profession in Tanzania Law and Practice*, Law Africa Publishing LTD, Dar es salaam, 2008, 276

⁶⁵ *Ibid*

⁶⁶ *Ibid*

⁶⁷ <https://www.independent.co.uk> (Accessed on 18th June, 2019)

⁶⁸ A.C. Hutchinson, *Legal Ethics and Professional Responsibility*, Irwin Law, Toronto, 2006, 14

Moreover since Advocate is an officer of the Court,⁶⁹ then it is incumbent upon the Court to see that its officers conducts is beyond reproach, and to punish those who do not adhere to the standards.⁷⁰ However it was argued by the legal scholars that, the legitimate exercise of disciplinary power of Judges towards Advocates should be limited to cater only for the necessity for the Judge to exercise full control over the Court proceedings, and is not applicable to matters taking place outside the Courtroom or Judge's chamber. A Judge would then be empowered to discipline an Advocate only where he has misbehaved in the Judge's presence in the Court.⁷¹

2.6. Rationale of the Power of Judges to Discipline Advocate

2.6.1. Duty to Ensure that Court Officers Conform to Prescribed Standards

The first contact that a member of the public has with the judicial system is often with court officers, such as Advocates. It is therefore especially important that the judge ensure, to the full extent within his or her power, that the conduct of court personnel are subject to the judge's direction and control, is consistent with the foregoing standards of conduct.⁷² Such conduct should always be beyond reproach and, in particular, court staff should refrain from gender insensitive language, as well as behavior that could be regarded as abusive, offensive, menacing, overly familiar, or otherwise inappropriate.⁷³

⁶⁹ Section 66 of the Advocate Act, Cap. 341

⁷⁰ *Sittingbourne and Sheerness R/y co V. Lawson* (1886)

⁷¹ F. Twaib, *The Legal Profession in Tanzania Law and Practice*, Publishing LTD, Dar es salaam, 2008,277

⁷² United Nations, *Commentary on the Bangalore Principle of Judicial Conduct*, United Nations Office on Drugs and Crimes,2007,126

⁷³ *Idem*,p126

2.6.2. Duty to Prevent Lawyers Engaging In Racist, Sexist or other Inappropriate Conduct

The judge must address clearly irrelevant comments made by lawyers in court or in the presence of the judge that are sexist or racist or otherwise offensive or inappropriate.⁷⁴ Speech, gestures or inaction that could reasonably be interpreted as implicit approval of such comments is also prohibited. This does not require that proper advocacy or admissible testimony be curtailed where, for example, matters of gender, race or other similar factors are properly before the court as issues in the litigation.⁷⁵

This is consistent with the judge's general duty to listen fairly but, when necessary, to assert control over the proceeding and to act with appropriate firmness to maintain an atmosphere of equality, decorum and order in the courtroom. What constitutes "appropriate firmness" will depend on the circumstances.⁷⁶

In some instances, a polite correction might be sufficient. However, deliberate or particularly offensive conduct will require more significant action, such as a specific direction from the judge, a private admonition, an admonition on the record or, if the lawyer repeats the misconduct after being warned and in so far as the law permits, contempt of court proceedings.⁷⁷

2.7. Conclusion

In this chapter, the researcher provides critical analysis of the power of Chief Justice, Judges of High Court and High Court in disciplining Advocates by discussing the procedures and rationale of the said disciplinary power. It has been observed that the

⁷⁴ *Idem*, p127

⁷⁵ *Idem*, p126

⁷⁶ *Ibid*

⁷⁷ *Idem*, P127

rationale of the disciplinary power of Chief Justice, Judges of High Court and High Court towards Advocate is to ensure Court officers such as advocates conform to prescribed standards, as well as to prevent inappropriate conducts as a way of assisting the Court to reach fair and Just decision.

Again it has been observed that Courts or tribunals that are empowered to discipline advocate should Conform to the rules of Natural Justice particular on the right to be heard, this implies that before passing the decision an advocate is entitled to be given notice, chance to tender evidence so as to support his case, as well as an opportunity to object the evidence tendered against him.

It is clear from the findings of this study that the said disciplinary power did not dispense with those essential requirements of the right of fair hearing, and hence amount to procedural impropriety, which implies the situation where the decision maker fails to observe the rules of natural Justice.

With regard to that, the research questions which are based on the assumption that to discipline advocate without adhering the principles of natural justice amount to procedural impropriety is answered in affirmative, because the study finds that, under the said disciplinary power advocate is disciplined without following any procedure of hearing.

CHAPTER THREE

LEGAL FRAMEWORK RELATING TO THE POWERS OF THE

CHIEF JUSTICE,

JUDGES OF THE HIGH COURT AND HIGH COURT IN

DISCIPLINING ADVOCATES

3.1. Introduction

This chapter analyses the laws which govern the legal profession in Tanzania, relating to the powers of Chief Justice, Judges of the High Court and the High Court in disciplining advocates. It is pertinent to admit that, legal profession in Tanzania is handled by Constitution of United Republic of Tanzania of 1977, and Advocate Act, Cap 341, the Advocate (Disciplinary and Other Proceeding) Rules,⁷⁸ as well as the Rules of Professional Conduct and Etiquette of Tanganyika law Society. Therefore detailed analysis of these laws will be within the ambit of discussion under this chapter.

3.2. Constitution of United Republic of Tanzania of 1977

Constitution is the basic law of the State. The fundamental law under which constitutes state power and defines the relationship between major organs of the state and citizens, due to that other laws of the country are required to conform to it.⁷⁹ The Constitution does not provide for professional conduct and ethics of advocates, but provides the principles for Administration of Justice.

The principles which courts should observe in delivering decisions in matters of civil and criminal in nature, among others impartiality (fairness) to all without due

⁷⁸ The Advocate (Disciplinary and Other Proceeding) Rules G.N.No.135 of 1955

⁷⁹ I.G.Shivji, *Constitutional Law and Legal System of Tanzania*, Mkuki na Nyota, Dar es salaam, 2004, 37

regard to one's social economic status.⁸⁰ Impartiality is essential to the proper discharge of the judicial office. It applies not only to the decision itself but also to the process by which the decision is made.⁸¹

Under impartiality a judge or any Judicial officer is obliged to ensure that judicial proceedings are conducted in an orderly and in efficient manner and that the court's process is not abused. An appropriate measure of firmness is necessary to achieve this end. A fine balance has to be drawn by the judge, who is expected both to conduct the process effectively and to avoid creating in the mind of a reasonable observer any impression of a lack of impartiality.⁸²

Any action which, in the mind of a reasonable observer, would (or might) give rise to a reasonable suspicion of a lack of impartiality in the performance of judicial functions must be avoided. Where such impressions are created, they affect not only the litigants before the court but also public confidence in the judicial process.⁸³

Moreover the expectations of litigants are high. Some will be quick to perceive bias quite unjustifiably when a decision is not in their favor. Therefore, every effort should be made to ensure that reasonable grounds for such a perception are avoided or minimized. A judge must be alert to avoid behavior that may be perceived as an expression of bias or prejudice. Unjustified reprimands of advocates, insulting and improper remarks about litigants and witnesses, statements evidencing prejudgments and

⁸⁰ Article 107A(2)(a)-(e) of *Constitution of United Republic of Tanzania* of 1977

⁸¹ United Nations, *Commentary on the Bangalore Principle of Judicial Conduct*, United Nations Office on Drugs and Crimes, 2007, 57

⁸² *Ibid*, p 61

⁸³ *Ibid*

intemperate and impatient behavior may destroy the appearance of impartiality, and must be avoided.⁸⁴

That being the case an advocate as an officer of the Court is also bound to observe those principles in order to assist the Court to reach fair and just decision, and failure of that he will be condemned for professional misconduct and contempt of Court.⁸⁵ Contempt of Court is the offense of being disobedient to or disrespectful of a Court of Law.⁸⁶ The power of holding someone in contempt of Court enables a judge to control the courtroom and to maintain decorum. Because it carries penalties that are criminal in nature and effect, contempt should be used as a last resort, only for legally valid reasons and in strict conformity with procedural requirements.⁸⁷

3.3. Advocate Act, Cap 341, R.E.2002

The Advocates Act, being the Principal Legislation for law relating to advocates and for connected matters that provides for establishment and procedure of the forums responsible for disciplining advocates, among others is the Judiciary, also provides power of Chief Justice, Judges of the High Court and the High Court.⁸⁸

The Act provides power to the Chief Justice and the High Court to discipline advocate by admonish or to suspending them from practice during specified period or to order his name to be removed from the roll.⁸⁹ The power should be for reasonable cause, for instant if the Chief Justice, the High court Judges and the High Court are in the

⁸⁴ *Ibid*

⁸⁵ V. Mtavangu, *Balancing a duty to the Court and to the Client : A dilemma of Legal Practice in Tanzania*, Open University Law Journal, 2013, Vol 4,150

⁸⁶ <https://www.oxforddictionaries.com>(Accessed on 20th June,2019)

⁸⁷ United Nations, *Commentary on the Bangalore Principle of Judicial Conduct*, United Nations Office on Drugs and Crimes,2007,60

⁸⁸ Section 22 of Advocate Act, Cap 341, R.E 2002

⁸⁹ Section 22(2)(a) of Advocate Act, Cap 341, R.E.2002, according to section 2 of the same Act, define the term ROLL to mean a list of admitted Advocates kept by the registrar of the High Court

opinion that the advocate's conduct amount to professional misconduct.⁹⁰ As provided under section 66 of the act that, Advocate is an officer of the High Court, and therefore has obligation to pay allegiance to the court to which he was admitted or which created him⁹¹. As an officer of the Court may also be disciplined by the Court for misconduct particularly those committed within the Court premises.⁹²

In short an Advocate must respect the Court by not allowing his personal feelings or those of his client to affect his duty that he owe towards the Court to treat it with Courtesy and respect. And that being the case always should address his remarks to the Court, and otherwise he or she will be guilt of professional misconduct, and punished accordingly by the High Court as well as Chief Justice.⁹³

Similarly, any Judge of the High Court may suspend an Advocate temporarily, pending reference to and the confirmation or disallowance of such suspension by the High Court.⁹⁴ Orders of the High Court are to be noted on the Roll of advocates and copies sent to other East African countries under the reciprocal enforcement of suspensions arrangement.⁹⁵

Nevertheless the Power of Chief Justice and Judges of High in disciplining advocate as provided under section 22 of Advocate Act does not conform with traditional rules of Natural Justice and the constitution, as it was held in the case of Judge in Charge, High Court at Arusha and A.G V. Nin Munuo Ng'uni⁹⁶, that;

⁹⁰ Section 22(2)(a) of the Advocate Act

⁹¹ V. Mtavangu, "*Balancing a duty to the Court and to the Client : A dilemma of Legal Practice in Tanzania*", Open University Law Journal, 2013, Vol 4, 150

⁹² *Idem*

⁹³ R.Bell, C. Abela, *A Lawyer's Duty to the Court*, P.5, Also rule 37(3)(a) of the rules of Professional Conducts and Etiquette of Tanganyika Law Society.

⁹⁴ Section 22(b) of Advocate Act, Cap 341, R.E. 2002

⁹⁵ Section 24 of Advocate Act, Cap 341, R.E. 2002

⁹⁶ Arusha and A.G V. Nin Munuo Ng'uni [2004]TLR 44

Section 22(2)(b) of the Advocate Ordinance, which gives a Judge of High Court power to suspend an Advocate, does not dispense with the right to be heard, and current trend and tempo of Human rights demand that there should be a right to be heard even for such interim decision.

In order to determine right to be heard an individual must be afforded with three important things, First sufficient notes must be given to allow the party to be adequately prepared for alleged offence. Second at any hearing a person will be entitled to know what evidence has been produced against him or her.⁹⁷ Third be given proper opportunity to contest, correct or contradict any such evidence and to state one's case and raise any relevant matters before the tribunal or Court of law.⁹⁸

The mentioned three important things are not provided under section 22 of the Advocate Act, in order to cure that problem, the three things are supposed to be incorporated in the Act, in order to secure the rights of advocates, this will help to avoid advocates not to be condemned unheard.

The Act provides for the right of appeal to an Advocate who is aggrieved by the disciplinary decision of Chief Justice, Judges of High Court and the High Court. The said Advocate is supposed to apply within thirty days to the Advocate's Committee where the said order was made by a Judge of the High Court, as well as he may appeal to the Court of Appeal if an order was made by the Chief Justice.⁹⁹ The act is silent in the circumstance the decision come from the High Court, whether it is appealable to the higher Court, that is Court of Appeal or not.

⁹⁷ Board of Education v. Rice and Others [1911]A.C.179

⁹⁸ F. Milindo, *Administration of Justice in Tanzania Mainland*, Law Africa Publishing Ltd, 2011,63

⁹⁹ Section 22 of Advocate Act, Cap 341, R.E. 2002

Moreover, the right of appeal is subject to a number of limitations, that in case of suspension the Advocates are not allowed to appeal until two years from the date of such order or after the half of the period of such suspension. Also in case of removing the name from the roll Advocates cannot be allowed to appeal until the expiration of two years.¹⁰⁰ This position is unjust, as when Advocates succeeds in the appeal he or she would have been punished.

3.4. The Advocates (Rules of Professional Conduct and Etiquette) Regulations, 2018

These rules enacted by the Tanganyika Law Society purposely for providing the standards in which the Advocates ought to observe as the members of the legal profession. The rules are restrictive and prohibit the conducts which affect and undermine the legal profession.

The rules prohibit any kind of methods of making one's services known to the public through the media or such other means referred to as advertising or self promotion by advocates. An Advocate may not direct or indirectly, invite business in a way that may amount to Advertising.¹⁰¹ The rules are very elaborate on the issue of advertising. Clearly, it is one of the items that have enjoyed considerable attention from the profession.

It entails that, when an advocate broadcasts on radio, television or gives speech, lecture and interview concerning the legal or non legal subject should be only identified by his name only or by designation of Advocate. He is not allowed to be identified in

¹⁰⁰ Section 28(b) of Advocate Act, Cap 341, R.E. 2002

¹⁰¹ Rule 5 of the Advocates(Rules of Professional Conduct and Etiquette)Regulations, 2018

connection with the practice of the Advocate of the firm¹⁰². Apart from Advertisement, the rules also prohibit touting in the Court premises and sharing of offices with someone who is not an Advocate since this would almost inevitably lead to the unfair attraction of business.¹⁰³

The rules also provides the standard of duty that an Advocate owe to the Court, client, members of the public, and his fellow members of the profession, that is to conduct with honestly, candor, and honor, as provided under rule 37 of the Rules of Professional Conduct and Etiquette of Tanganyika Law Society.

Under the rules, it is primary obligation to an advocate to be loyal to the interest of their clients. They must ensure that once they enter into relationship with their clients they should pay priority to their concerns and affairs of the client. In particular Advocates must act impartially and avoid any conflicts that might prejudice the client's interest or compromise their integrity.¹⁰⁴

In addition to that, it is incumbent to advocates dealing with their clients in an entire "open and undisguised" manner. They must ensure that they provide candid advice and guidance to clients on all legal and professional matters such advice should comprise a competent legal opinion based on an informed knowledge of facts and the law, which state the merits of the case and the probable outcomes. That means he should serve the client interest with his best skills and care¹⁰⁵. Similarly, at all times he should maintain

¹⁰² Rule 5(b) of The Advocate(Rules of Professional Conduct and Etiquette)Regulations,2018

¹⁰³ Rule 8(b) of The Advocate(Rules of Professional Conduct and Etiquette)Regulations,2018

¹⁰⁴ Rule 37(2) of The Advocate(Rules of Professional Conduct and Etiquette)Regulations,2018

¹⁰⁵ Rule 37(2) of Rules of Professional Conduct and Etiquette of Tanganyika Law Society

the honor and dignity of his profession and to deal honorably, frankly and fairly with all his colleagues.¹⁰⁶

Moreover, it is provided that, despite his duty to defend his client's interest, an advocate should never allow his personal feelings or those of his client to affect his duty as an Advocate to treat the Court, the lawyer on the other side and the witness with courtesy and respect.¹⁰⁷

In addition to that, the Advocate should use tactics that are legal, honest and respectful. This duty is often referred to as the duty of candor. Under this umbrella of an advocate's duty to the court, advocates are primarily responsible for ensuring that they do not employ strategies that will mislead the court; this includes misleading the court on evidentiary and legal points as well as making use of tactical strategies that are likely to affect a case.

3.5. The Advocate (Disciplinary and Other Proceeding) Rules 2018

These are the rules made by the Advocate Committee by virtue of section 14 of Advocate Act. The rules provide the procedures of disciplining Advocates, such as the manner of making an application to remove the name of Advocate from the roll if an advocate commits professional misconduct, the manner of providing evidence so as to proof the allegation as well as the manner of hearing, delivering of decision and appeal, according to rule 13(1).¹⁰⁸

The rules are only applied when the matter are in the advocate's committee they not apply in connection with the power of Chief Justice, Judges of High Court and High

¹⁰⁶ Rule 37(4) of Rules of Professional Conduct and Etiquette of Tanganyika Law Society

¹⁰⁷ Rule 37(3)(a) of Rules of Professional Conduct and Etiquette of Tanganyika Law Society

¹⁰⁸ The Advocate (disciplinary and Other Proceeding) Rules, 2018

Court in discipline Advocates, nevertheless, they set a standard framework of the procedure on how to discipline an advocate. The same perspective should have been adopted in the course of disciplining advocate by the Chief Justice, Judges of the High Court and the High Court.

3.6. Conclusion

It can be observed from the above discussion that the disciplinary power of Chief Justice, Judges of High Court and High Court are governed by the Constitution of United Republic of Tanzania of 1977, Advocate Act, cap 341, the Advocate (disciplinary and Other Proceeding) Rules¹⁰⁹ as well as the Rules of Professional Conducts and Etiquette of Tanganyika Law Society. The legal regime set out the ethical standards in which Advocates are legally bound to adhere when they discharge their day to day duties. Again it provides procedures to be followed by Judges and High Court when discharging their disciplinary power to Advocates who fall short of professional standards.

Moreover, unlike Constitution of United Republic of Tanzania, section 22 of the Advocate Act which provides the disciplinary power to the Chief Justice, Judges of High Court and the High Court towards advocate did not dispense with the right to be heard. While the Advocate (disciplinary and other proceeding) rules do not apply in connection with the power of Judges and High Court to discipline advocate. It is the only rule which cater for the disciplinary procedures of Advocate such as tendering of evidence and fair hearing, in any disciplinary action against an Advocate exclusively in the Advocate Committee.

¹⁰⁹ *Ibid*

Upon that, an advocate is denied the opportunity of showing causes why he or she is not supposed to be suspended or his name not to be removed from the roll, to asking which evidence has been produced against him or her as well as to contest the evidence brought against him. Therefore under section 22 of Advocate Act an Advocate is condemned unheard which is contrary to the Constitution of United Republic of Tanzania of 1977, and traditional rules of Natural Justice.

Regarding to that the research question of this study is based on the postulate that there is little observation of the rules of natural Justice as well as Constitutional rights of Advocates when Advocate is disciplined by the Judges or High Court. It is clear that from the findings of this study it is vivid that the power of Chief Justice, Judges of the High Court and the High Court do not observe the rules of natural Justice and Constitutional rights of Advocates, when dealing with matter affecting rights and interest of the Advocates hence affects its efficacy in dealing with discipline of Advocates. And therefore this research question has been proved in affirmative.

Furthermore, the Advocate Act provides right of Appeal against the decision of Judges and High Court subject to the limitations, such as an appeal to be filed after expiration of two years from the date when decision was issued. The said limitations bring injustice since when Advocate succeeded in his appeal he or she will be already perform a part of his punishment, and therefore in one way or another destroy the essence of appeal as provided by the Constitution¹¹⁰. And hence the assumption based on the postulate that limitations of appeal against the decision of Chief Justice, Judges of High Court and High Court to discipline advocate violate the right to appeal guaranteed by the Constitution is measured in affirmative.

¹¹⁰ Article 13(6)(a) of the Constitution of United Republic of Tanzania of 1977

CHAPTER FOUR

ANALYSIS OF RESEARCH FINDINGS

4.1. Introduction

This chapter carries the core part of the research as it provides the findings of the research managed to be observed by the researcher. The researcher finds a lot of issues in connection with the disciplinary power of Judges and High Court towards Advocate, which challenge that disciplinary power which are going to be discussed and analyzed under this chapter.

4.2. The disciplinary power of Judges and High Court infringe Constitutional rights of Advocates and rules of natural Justice.

The findings of the study show that the power of Chief Justice, Judges of High Court and High Court to discipline advocates contravenes both Constitutional rights as well as the rules of natural justice.¹¹¹

Under this question I interviewed sixteen(16) practicing advocates, they are on the view that indeed the disciplinary power vested to Judges of the High court infringes constitutional rights of advocates and the rule of natural justice, and this is due to the fact when an advocate is alleged to commit a certain misconduct before the Judge can be disciplined without being afforded an opportunity to tender evidence before that Judge

¹¹¹ Charge, High Court at Arusha and A.G V. Nin Munuo Ng'uni [2004]TLR at page 54

to dispute the alleged misconduct and hence condemned unheard.¹¹² Here below are the rights of Advocates which have been violated by the said disciplinary power as observed by this research.

4.2.1. The right to be heard

The study finds that, the Constitution grants the right to be heard to any individual such as advocate when his or her rights are being determined by the Court or other Agencies.¹¹³ It has been observed that the constitutional right entails that no one should be condemned unheard. The Constitution requires that an individual should be heard before passing the decision or an order, similarly to the traditional rules of natural Justice particularly on the rule of *Audi Alteram partem* which requires that every person in dispute should be afforded an opportunity of being heard.¹¹⁴ That rule implies that any person against whom an order to his prejudice is passed should be given information as to the Charges against him and should be given an opportunity to submit his explanations thereto.¹¹⁵

Under this question the practicing advocates are on the view that, right to be heard is done when a party to the suit is given an opportunity to defend himself for the alleged matters, through being given notice of the alleged matter, being given an opportunity to tender evidences upon the alleged matter in question.¹¹⁶

Moreover, it is important that in disciplinary action towards advocates all relevant documents should be disclosed to proof the allegations against the accused lawyer and its general principle that anybody empowered to discipline lawyers (Advocates) is

¹¹² Interview with practicing advocates in Iringa in July, 2019

¹¹³ Article 13(6)(a) of Constitution of the United Republic of Tanzania of 1977

¹¹⁴ S. Zalpuri, *Training Package on Administrative Law*, University of Kashmir, Srinagar City, 2007, 75

¹¹⁵ *National Central Cooperative V. Ajay Kumar*, A.I.R 1994, S.C.39

¹¹⁶ *Supra* note 105

required to conform with the traditional rules of natural justice in order to ensure that there is fair hearing.¹¹⁷

Despite of that, the study finds that section 22 of Advocate Act, which provides the said disciplinary power does not give an Advocate the opportunity of being heard, a right to show cause and to defend for himself as required by the Constitution and the traditional rules of natural justice. Therefore under section 22 of Advocate Act an Advocate is condemned unheard which is an unnecessary infringement of constitutional right of Advocates.¹¹⁸

In the case of Judge in Charge, High Court at Arusha and A.G. V. Nin Munuo Nguni,¹¹⁹ the court held that, “section 22(2) of the Advocate Act does not dispense with the right to be heard, and current trend and tempo of human rights demand that there should be a right to be heard even for such interim decision”. In the said case, the Court of Appeal observed that such provision affect the rights of individual, that there should be a right to be heard by arguing that now days, Courts in some Jurisdictions, like the Eire Republic, demand not only that a person be given a right to be heard but be given an adequate opportunity to be heard.¹²⁰

The Court also argues that, it is a fundamental Justice that a person or property should not be at risk without the party charged being given adequate opportunity of being heard. If the proceedings derive from statute, then in the absence of any set of fixed procedures, the relevant authority must create and carry out the necessary

¹¹⁷ A.C. Hutchinson, *Legal Ethics and Professional Responsibility*, Irwin Law, Toronto, 2006:7

¹¹⁸ F. Twaib, *The Legal Profession in Tanzania Law and Practice*, Law Africa Publishing Ltd, Dar es salaam, 276-277

¹¹⁹ Judge in Charge, High Court at Arusha and A.G. V. Nin Munuo Nguni [2004]TLR.44

¹²⁰ <https://www.billofrightsintstitute.org> (Accessed on 19th June, 2019)

procedures, if the set and fixed procedure is not comprehensive, the authority must supplement it in such a fashion to ensure compliance with Constitutional Justice.¹²¹

Apart from the above explanations about a right to be heard

Furthermore the study finds that, the perception of advocates towards section 22 of Advocate Act infringes their Constitutional right.¹²² The provision is prejudicial against advocates, since it presumes guiltiness before proof; it is therefore contravening both of rules of natural justice and Constitutional right of advocates.¹²³

4.2.2. Presumption of Innocence

Presumption of innocent is an individual right granted by the Constitution, that an individual is presumed innocent of an offense until proved guilty of the said offense¹²⁴. However it was observed that, the presumption of innocence has long been regarded as fundamental to protecting accused persons from wrongful conviction.¹²⁵ The study find that this right is violated by section 22 of Advocate Act, whereby under such section the Chief Justice, Judges of High Court and the High Court may admonish, suspend or order the name of Advocate to be removed from the roll without proof,¹²⁶ which is against the right of presumption of innocent.

The study observes that, the reason why this principle is considered fundamental is due to the fact that it is better for the guilty person to go free than the innocent be

¹²¹ In the State (Irish Pharmaceutical Union) V. Employment Appeals Tribunal[1987]ILRM

¹²² F. Twaib, *The Legal Profession in Tanzania Law and Practice*, Law Africa Publishing Ltd,Dar es salaam, 2008,277

¹²³ *idem*

¹²⁴ Article 13(6)(b) of the Constitution of the United Republic of Tanzania of 1977

¹²⁵ <https://www.ag.go.tz/presumptionofinnocent>(Accessed on 19th June,2019)

¹²⁶ F. Twaib, *The Legal Profession in Tanzania Law and Practice*, 2 Law Africa Publishing Ltd,Dar es salaam, 2008,76

convicted according to Blackstone's ratio.¹²⁷ Also it is observed that, the principle of Presumption of Innocent entails that the accused must be treated as innocent until proven guilty beyond reasonable doubt of all substantive questions that require to be answered in order to convict him for the crime alleged.¹²⁸

Therefore the Chief Justice, Judges of the High Court and the High Court should conform to the principle of presumption of innocence as required by Constitution. That is to say to prove the guilt of the advocates beyond reasonable doubt before passing any decisions, also afforded advocate an opportunity of being heard, that is to tender evidence and to object the evidence tendered against him.¹²⁹

4.2.3. Right to Appeal

This is the right which allows an individual to make an application to the higher Court or tribunal for aggrieved decision made by the lower Court or tribunal.¹³⁰ This right has been guaranteed by the Constitution in the sense that an individual is entitled to the right of appeal against the decision of the Court or other agencies.¹³¹ The right of appeal is a Constitutional right of which cannot be denied when the matter in dispute is being determined by a court of law.¹³²

The study observed that an appeal is very important in any legal system, which serves two main purposes, first it helps to correct an error, unfairness or wrong exercise of discretion, which has led to unjust result at the trial level.¹³³ Second it ensures public

¹²⁷ *Ibid*

¹²⁸ <https://www.ag.go.au/presumptionofinnocent>(Accessed on 19th June,2019)

¹²⁹ A.C. Hutchinson, *Legal Ethics and Professional Responsibility*, Irwin, Toronto,17

¹³⁰ www.dictionary.com/browse/appeal(Accessed on 20th June 2019)

¹³¹ Article 13(6)(b) of the Constitution of the United Republic of Tanzania of 1977

¹³² William Malaba V. R, Criminal Appeal no 5 of 2005, CAT at Mwanza(Unreported)

¹³³ F.Milindo, *Administration of Justice in Tanzania Mainland*, Law Africa Publishing, Dar es salaam, 2011,535

Confidence in the administration of Justice by clarifying and developing the law, practice and procedure.¹³⁴

The study finds that this right is violated since under the advocates Act the right to appeal against the decision of Chief Justice, Judges of High Court and the High Court is subject to the number of limitation. The study observed that in case of suspension the Advocates are not allowed to appeal until the expiration of two years from the date of such order or after the half of the period of such suspension, and also in case of removing the name from the roll Advocates cannot be allowed to appeal until the expiration of two years.¹³⁵ This position destroys the essence of appeal.

4.3. Procedural Impropriety

Procedural impropriety this happens when there is a failure to observe procedural rules of the law and basic rules of natural Justice.¹³⁶ The study finds that the rationale of observing fair procedure is to ensure justice when the rights of an individual are determined. Fair procedure means to treat individual in the way that is considered morally right or proper and legally correct.¹³⁷

Due to that any individual accused of an offence, his guiltiness or innocence should be determined by a fair and effective legal process. That an individual should be given adequate notice of the nature and purpose of the proceedings, be afforded an adequate opportunity to prepare a case, presenting arguments and evidence, and opposing arguments and evidence provided against him, either in writing, orally or by both means,

¹³⁴ *Idem*

¹³⁵ Section 28(b) of Advocate Act, Cap 341, R.E. 2002

¹³⁶ www.lawlecture.net/proceduralimpropriety (Accessed on 14th June 2019)

¹³⁷ <http://www.merriam-webster.com/dictionary/just> (Accessed on 14th June 2019)

be represented by counsel or other qualified persons of his choice during all stages of the proceedings.¹³⁸

The study finds that these requirements of right to be heard are not dispensed with the power of Chief Justice Judges of the High Court and the High Court in disciplining Advocate. The said power did not provide any sort of fair procedure to be followed,¹³⁹ and this led their disciplinary action to be injustice due to the procedural impropriety.

4.4. The decision or an order made by Chief Justice, Judges of High Court and High to discipline Advocate is void in Law

The study finds that a denial of a right to be heard renders the decision void in law. It is observed that any decision made without affording a person the opportunity to be heard is declared void by the higher court.¹⁴⁰ In Judicial proceedings a decision is declared nullity by the higher Court where a decision has been made without affording a necessary party the opportunity of being heard.¹⁴¹ Therefore the study observe that the decision made by Chief Justice, Judges of High Court and High Court is void in law since did not comply with the right to be heard.

4.5. Testing research questions

Having analyzes the findings of this study is now vital to refer back to the research questions and see whether such research questions have been measured in affirmative.

¹³⁸ United Nations, Commentary on the Bangalore Principle of Judicial Conduct, United Nation Office on Drugs and Crime, 2007, 53

¹³⁹ F. Twaib, *The Legal Profession in Tanzania Law and Practice*, 2 Law Africa Publishing Ltd, Dar es salaam, 2008, 76

¹⁴⁰ Abbas Sherally and Another V. Abdul SHM Fazalboy, Civil Appeal No 133 of 2002, Court of Appeal of Tanzania at Dar es salaam (unreported), DPP V. Sabinis Inyasi Tesha and Another [1993] TLR 237

¹⁴¹ Bank of Tanzania V. Said Marinda and Another, Civil Appeal No 74 of 1998, Court of Appeal of Tanzania at Dar es salaam (unreported)

The research questions of this study bases on the fact that there is little observation of the rules of natural Justice as well as Constitutional rights to advocates when advocate is disciplined by the Chief Justice, Judges of the High Court or High Court. It is clear that from the findings of this study it is vivid that the power of the Chief Justice, Judges of the High Court and the High Court do not observe the rules of natural Justice and Constitutional rights of Advocates, when dealing with matter affecting rights and interest of the advocates hence affecting its efficacy in dealing with discipline of advocates. Therefore the research questions have been proved in affirmative.

The other thing is that the denial of the right to be heard renders the decision void in law. The findings of this study have revealed that the denial of the right to be heard renders the decision void in law in the sense that it is against the principle of natural justice and the constitution of United Republic of Tanzania, 1977. That being the case the decision of judges and the High Court in disciplining advocates under the light of section 22 of Advocate Act is also null and void.

Another issue is on the limitations of appeal against the decision of Chief Justice, Judges of High Court and the High Court to discipline advocate violates the right to appeal guaranteed by the Constitution. The study observed that the limitations to appeal violates the right of appeal in the sense that, the advocate is allowed to appeal after having been serve a part of punishment, which actually destroy the essence of appeal as guaranteed by the Constitution.

The last thing is on the assumption that to discipline advocate without adhering the principles of natural justice amount to procedural impropriety is also answered in affirmative in the sense that advocates are condemned without following any procedure of fair hearing.

4.6. Conclusion

This chapter provides analysis on the findings of this study in relation to the power of Chief Justice, Judges of the High Court and the High Court, which challenge the efficacy of the said power. The researcher analyses the test of research questions to see whether have been measured in affirmative.

It has been found that the power of Chief Justice, Judges of the High Court the High Court contravene both Constitutional rights of advocates as well as the traditional rules of natural justice in the sense that the advocate is not given the opportunity of been heard before passing of the decision or an order.

Apart from that it was found that the decision or an order issued without observing the rules of natural justice as well as the Constitutional rights is void in law in the sense that it is contrary to individual rights. Again it was observed that the limitations of appeal against the decision of Judges and the High Court to discipline advocates affect the right of appeal in the sense that advocates is allowed to appeal but such appeal has limitations.

CHAPTER FIVE

CONCLUSION AND RECOMMENDATIONS

5.1. Conclusion

The research involved in analyzing the power of Chief Justice, Judges of High Court and High Court in disciplining advocates. It is pertinent to admit that the said disciplinary power is governed by Constitution of United Republic of Tanzania of 1977, Advocate Act, Cap 341, the Advocate (Disciplinary and Other Proceeding) Rules,¹⁴² as well as the Rules of Professional Conduct and Etiquette of Tanganyika law Society.

Those legal regime set out the ethical standards in which advocates are legally bound to adhere when discharged their day to day duties. It stipulates procedures to be followed when advocate is disciplined by the competent Authorities such as Chief Justice, Judges of High Court and High Court.

It has been observed that the rationale of the disciplinary power of Judges and High Court is to ensure the Court officers such as advocates conform to prescribed standards and to prevent them to engage in appropriate conducts as well as to instill discipline and control in the Profession, particularly when they are in the Courtroom, so as to assist the court to reach fair and Just decision.

Nevertheless, it has been observed that, the disciplinary power do not dispense with the Constitutional rights of the advocates as well as the traditional rules of natural justice. The findings observed that the advocates are not given the opportunity of being heard before passing the decision or an Order; Such as to show cause why he or she

¹⁴² The Advocate (Disciplinary and Other Proceeding) Rules, 2018

should not be suspended or his or her name to be removed from the roll, to asking which evidence has been tendered against him or her, as well as to contest the evidence brought against him. Therefore under section 22 of Advocate Act, an Advocate is Condemned unheard which is Contrary to the Constitutional rights of advocate as well as the rules of natural justice.

Apart from that, the study found that the limitations of appeal against the decision of Chief Justice, Judges of the High Court and the High Court in disciplining advocates contravene the right of an appeal of the advocates guaranteed by the Constitution, as it is observed that the advocates are allowed to appeal after expiration of two years from the date when the decision was made. This position brings injustice as when Advocates succeeds in the appeal he or she would have been punished, and therefore in one way or another destroys the essence of appeal as provided by the Constitution.

Lastly, the study found that non adherence to the Constitutional rights as well as rules of natural Justice affect the power of Chief Justice, Judges of the High Court and the High Court in disciplining advocates, in the sense that it render the decision to be void in law. For that reason the power of Chief Justice, Judges of High Court and High Court is not effective in disciplining Advocates.

5.2. Recommendations

The research demonstrated how the power of Chief Justice, Judges of High Court and High Court is not effective in disciplining Advocate due to non adherence of Constitutional rights of Advocates as well as the rules of natural Justice, as they render the decision to be void in law. The following are the recommendations and suggestions towards reaching a solution which will be a proper platform for the power of Chief

Justice, Judges of the High Court and the High Court to become effective in discipline Advocate.

5.2.1. The Need to Amend the Provision of Advocate Act, Cap 341

The amendment should be done on section 22 of Advocate Act which provides the said disciplinary power in order to be effective in disciplining Advocate and controlling the entire Profession, in order to ensure that the Advocates conform to prescribed standards and prevent them in engaging inappropriate conduct while they are in the Court room. The said amendments should conform to the Constitutional Rights as well as the rules of natural Justice, particularly on the right to be heard.

Again amendment should be done so as to remove the limitations of appeal against the decision of Chief Justice and Judges of High Court in disciplining advocates, this infringe the right to appeal guaranteed by the Constitution. Therefore the amendments should allow the advocates to appeal immediately after the decision has been made and punishment should stop until the decision of an appeal.

5.2.2. The Procedures in Advocate (Disciplinary and Other Proceeding) Rules should be adopted.

It is recommended that the disciplinary procedures of the Advocates (Disciplinary and Other Proceedings) Rules, as applied in the Advocate Committee on how to discipline Advocates should be adopted in the course of disciplining Advocates by the Chief Justice, Judges of the High Court and the High Court. The said procedures conform to the Constitutional rights of advocates, as well as the rules of natural justice. In Advocate disciplinary Committee an Advocate is not condemned unheard unlike in the power of Chief Justice, Judges of the High Court and the High Court. If it is not

possible to adopt the said procedures then it is better the disciplinary power to be left to the Advocate disciplinary Committee in order to stop advocates from being condemned unheard.

5.2.3. The Need to Define and Limit the Scope of Misconducts that are Subject to be dealt by Chief Justice, Judges of High Court and High Court.

The current position of law did not provide the scope of the Chief Justice, Judges of the High Court and the High Court to deal with misconduct of advocates. The Chief Justice, Judges of the High Court and the High Court has the wide range in dealing with misconduct of the advocates regardless of where or how the issues arise. This position makes them to have concurrent Jurisdiction with the Advocate disciplinary Committee, which is not proper under the eyes of the law.

Therefore to make the law in the proper position and being effective the law should limit and define the correct misconduct supposed to be dealt by the Chief Justice, Judges of the High Court and the High Court, such as those committed in course of Court proceeding. And those Misconducts committed outside the court rooms or Judges Chambers should be dealt by the Advocate disciplinary Committee.

5.2.4. Tanganyika Law Society should take into Account to Make sure the Disciplinary Power of Chief Justice, Judges of High Court and High Court is Effective.

Tanganyika law Society to which all practice Advocates are members has obligation to assist the legal matters and Courts in all matters affecting legislation, administration and practice of the law in Tanzania. That being the case the Tanganyika Law Society has obligation to recommend the amendment of section 22 of Advocates

Act to make the disciplinary power of Chief Justice, Judges of High Court and High Court towards advocates to be effective.

The Tanganyika Law Society represents all practice Advocates which are the Victims of the problem. It is suppose to take actions to stop the infringement of fundamental rights of its members such as the right to be heard as well as the right to appeal which is not subjected by the limitations provided under section28(1)(b) of the Advocate Act, Cap 341.

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