



*SUSTAINABILITY OF NATIONAL BAR ASSOCIATION:
REFLECTION ON MISCELLANEOUS AMENDMENTS ACT NO. 2 OF 2018*

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A Paper for presentation during the Tanganyika Law Society (TLS) Annual Conference and General Meeting to be held at AICC, Arusha, Tanzania, 05th April, 2019

Outline

1. Introduction
2. Understanding a National Bar Association
3. The impugned amendments
4. Reflection on the amendments
5. Conclusions

Introduction

- The timely intervention by TLS
- Given the importance of the Bar Association in Tanzania and the effect that the amendments seek to introduce in the workings of Tanganyika Law Society.
- An interactive session aiming at giving chance to members to air their views on the quandary of the society as it attempts to survive the impugned amendments

Understanding A National Bar Association

- ▶ A professional association of lawyers in a particular country.
- ▶ “Bar association” has its background from common law legal practice in Britain our colonial master. In the United Kingdom, the **practice** of law is divided between barristers (advocates in Scotland) and solicitors. It is usually the former who appear in an advocacy role before the court.
- ▶ When a lawyer becomes an advocate or barrister, he/she is called to the bar and an association that brings such legal practitioners together on matters of legal profession is therefore a Bar Association.

National Bar Association Ctnd....

- ▶ Some **bar associations** are responsible for the regulation of the legal profession in their jurisdiction; others are professional organizations dedicated to serving their members. In many cases, they are both as is the case with Tanganyika Law Society a bar association in Tanzania mainland.

National Bar Association Ctnd....

- ▶ Some **bar associations** are responsible for the regulation of the legal profession in their jurisdiction; others are professional organizations dedicated to serving their members. In many cases, they are both as is the case with TLS a bar association in Tz mainland under the Governing Council.
- ▶ Under normal circumstances such professional association are established by the members themselves in their own volition. As for TLS the situation is different

National Bar Association Ctnd....

- ▶ Practice successfully tested in India by British
- ▶ The arrangement functioned well until 2017 when some statements of the leadership irritated some corners
- ▶ Bango Kitita not well received by members and governing council
- TLS Act was amended by introducing an injunctive provision to anyone who wished to be in the leadership of the society. i.e prohibition of political activities by any such person and disqualified him from being elected member of the Council.

Reflection on Amendments

- State had powers to amend the Tanganyika Law Society as obviously is always the case with other laws.
- Much as the law itself belonged to the State but the society belonged to the members of the legal profession who practice law.
- Attorney General has made the members treat with suspicion the motive behind the amendments to the extent of doubting the sustainability of TLS as a National Bar Association.
- State's desire to control TLS and make it a toothless bull dog

Reflection Ctnd...

- scenario casts doubt on the Society's further ability to meaningfully carry out its functions and realise the objectives for which it was established especially where the Society takes different position to that of the State.
- Akeen to Amendment of Art 26 of the Treaty

Reflection Ctnd...

- ▶ Amendments targeted some members in the TLS Governing Council from re-contesting their positions but while achieving the intended objective, it has also left permanent dent on the sustainability of the Society as a national bar association.
- ▶ The impugned amendments have no safeguards and are open to abuse by the Attorney General as it happened
- ▶ Not healthy for the association whose relevance depends on autonomy and full independence the qualities that the amendments seek to take away

Reflection Ctnd...

- ▶ With these amendments, TLS has now assumed character of a State Agency which to me is glaringly wrong
- ▶ Full independence of the Society is critical especially now when advocates are being put in prison by the executives simply because they discharge their duty by representing clients in disputes where the State happens to have interest.
- ▶ Such arbitrary arrests and whimsical detentions are against rule of law and the society cannot afford to offer a blind eye.

Reflection Ctnd...

- ▶ An independent Bar Association helps prevent such unchecked behaviour by taking necessary legal actions.
- ▶ Amendments require the members of the Council to observe political neutrality, and prohibits them from engaging in some identified political activities
- ▶ Amendments dont define the term “political activities” but just tell us what the term include, meaning that the list may be longer.

Reflection Ctnd...

- ▶ Whoever contravenes the provisions of section 15A (2) commits a gross misconduct warranting the Attorney General to petition to the Advocates Committee for removal of such member from the Roll of Advocates
- ▶ Intimidating enough and it aims at cowing down the Council members from handling cases of political significance.
- ▶ Are similar restrictions imposed on leaders of other professional associations?
- ▶ Impugned amendments seek to make the leadership of the bar association part of the executive with a view to handcuffing them with collective responsibility chain so that they speak the same language with executive whenever needed to do so

Reflection Ctnd...

- ▶ There may be very little option, if at all any, for the society leadership to get off the hook as long as the impugned amendments and the Tanganyika Law Society Act, Cap 307 remain to govern the affairs of the society.
- ▶ If TLS wants to be fully independent it should think through the possibility of having an association that originates from the members themselves much as it may be an uphill task.

Conclusion

- ▶ We have seen how unhealthy it is for a national bar association to be under the control of the state instead of being autonomous and independent. The Members and the Governing Council should resist this attempt.

Thank you