

PROTECTION OF LEGAL SERVICE CONSUMERS IN TANZANIA: AN EXAMINATION OF THE LAW

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Abstract

In protection of both consumers of goods and services, quality forms a key aspect. This paper discusses quality of legal services offered by advocates to their clients. It is revealed in this paper that save for precedents there is no legislation in Tanzania which imposes duty on advocates to offer quality legal services. It is also revealed that quality of legal services offered to clients depend on ability of the client to afford the services, ability of the client to clearly state his needs and; the ability of the advocates to make use of his skills and knowledge to offer a requisite solution to the client's needs. It is further revealed that institutions responsible with monitoring the quality of legal services are characterized by deficiencies. This paper recommends for both constitutional and legal reforms that will take on board the needs of the consumers of legal services.

Key Words: *Legal services, council, consumers*

1.0 Introduction

The practice of law over the world is regulated.¹ The regulation takes various forms. The most used form is statutory regulation. Most jurisdictions have legislation regulating the practice of law. With the liberalisation of economies, globalization and the development of international trade, the regulation of the practice of law is now taking a new form. That form is embodied in international law and memoranda of understanding.² Regulation of the legal profession aims at among others, ensuring that the profession operates on the basis of sound principles. An aspect of protection of the consumer of legal services which was previously either ignored or forgotten is now obtaining space in current literatures and legislation.³ In discussing this subject we will only make reference to the Advocates Act, Cap. 341 and the Tanganyika Law Society Act, Cap. 307.

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For a detailed discussion on the origin, development and regulation of the legal profession, see Jonathan R. 'Medieval Attitude towards the Legal Profession: The Past as Prologue', 28 *Stretson Law Review* 1, (1999); Brundage J. 'Vultures, Whores and Hypocrites: image of Lawyers in Medieval Literatures, 1 *Journal of Roman Legal Tradition*, (2002), p. 62; Uelmen A., 'A View of a Legal Profession from a mid 12th Century Monastery', 71 *Fordham Law Review*, (2003), pp.1537-1538 and; Buhai S. 'Lawyers as Fiuciaries' 53 *Saint Louis University Law Journal*, (2009), p.559.

2 See United Nations Principles on the Role of Lawyers; Adopted by the Eight United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September, 1990; Mutual Recognition Agreement for Advocates in the East African Community, Draft number 1 October 30th, 2014. See also the East African Community Cross Border Legal Practice Bill, 2014.

3 A client may seek the services of an advocate on a myriad of issues which range from contentious business to non-contentious business. Save for Legal Services Act, 2007 (UK), legislation of most jurisdictions do not provide the scope of services reserved for the professional lawyer.

There reason for this approach is that there is still a debate on the enforceability of the rules made by the Tanganyika Law Society.⁴ This paper starts by discussing briefly the basic features of the law on quality of legal services.

2.0 Basic Features of the Law on Quality of Legal Services

In consumer protection, quality occupies a central part. Although the consumer is his first protector, the role of controlling quality is usually not carried out by the consumers themselves.⁵ It is vested in authorities having capacity, skills and human resources.⁶ Moreover controlling quality comprises certain crucial processes and procedures which in most cases involve multiple stakeholders, institutions and authorities.⁷ These steps and processes are obtainable in law and practice.⁸

Legal service is a consumable product having no substitute.⁹ When it is consumed without guidance and accessing its quality, it is likely to cause injury and harm to consumers. Thus, laws are in place to ensure that consumers are availed with quality legal services which are appropriate to their needs. The laws on quality of legal services are supposed to provide in details for two duties of an advocate to his client, i.e., competency and quality of legal services. The laws should provide that the lawyer owes the client a duty to be competent to perform any legal services undertaken on the client's behalf and; that the lawyer should serve the client in conscientious, diligent and efficient manner so as to provide a quality service at least equal to that which lawyers generally would expect of competent lawyer in a like situation.¹⁰

4 *Mkono and Company Advocates (a firm) v. JW Ladwa* (1977) High Court of Tanzania Commercial Division at DSM, Civil case No. 3 of 2000 reported in (2000) TLR 376.

5 Most consumers are not skilled in assessing the quality of services and products they consume. They simply rely on the information supplied by the suppliers which is not always correct. The information supplied to consumers by the suppliers is most of the time technical and full of misrepresentation. That information is also sometime too much for the consumer to analyse and synthesize.

6 Such authorities include Consumer Protection Authorities and Competition Authorities.

7 Procedures monitoring protection of consumers relate to various processes. These processes include obtaining licence for establishing the business, registering the business, procedures relating to production of the goods or services, packaging the goods in accordance to appropriate weights and volumes, labelling, safely distribution of the goods in the market and safely consumption of the product. These processes are mostly regulated so that the consumer is not harmed by the product supplied to him. See *Donoghue v. Stevenson* (1932) AC 562; See also Henderson J., "Judicial Review of Manufacturers' Conscious Design Choices: the Limits of Adjudication" in *Columbia Law Review*, volume 73, Issue No.8, 1973, p.1531, at p.1546, 1555 available at <http://scholarship.law.cornell.edu/facpub/964> (accessed on 12th August, 2015).

8 In consumer protection, law denotes the state willingness to monitor the economic activities of, among others, the private enterprises which are likely to cause injury to the public, i.e., the consumers. Therefore the interest of the state is to make sure that there is a levelled ground upon which the consumer and the supplier may negotiate on equal terms. On the other hand practices emerge in two ways. On one hand practices emerge as an attempt of seeking a best way of implementing and enforcing the law; on the other hand practices emerge as an attempt to fill in the lacunae in the existing law.

9 In consumer protection, there are two types of consumer needs: substitutable and non substitutable needs. A consumer who drinks a certain brand of beer may substitute the same with the other brand in case his preference is not satisfied or he may opt not to drink until his brand is available in the market. The consumer of legal service has no substitute. For instance certain documents are supposed to be executed before the lawyer. Also there are other services which can only be supplied by the advocate. The services of an Advocate therefore are mandatory; they cannot be substituted with the other process. For example representation in suits and attestation of signatures is done by advocates (save for few exceptional cases).

10 See Hutchinson A., *Legal Ethics and Professional Responsibility, Essentials of Canadian Law*, (Canada: Irwin Law, 1999) see., Appendix A: Canadian Bar Association: Code of Professional Conduct.

The law on quality of legal services should have a list of conduct that does not meet the quality of service required by the law. The following is the list of such conduct though by no means exhaustive.

- (a) Failure to keep the client reasonably informed;
- (b) Failure to answer reasonable requests from the client for information;
- (c) Unexplained failure to respond to the client's telephone calls;
- (d) Failure to keep appointments with clients without explanation or apology;
- (e) Informing the client that something will happen or that some steps will be taken by a certain date, then letting the date pass without follow up information or explanation;
- (f) Failure to answer within a reasonable time a communication that requires a reply;
- (g) Doing the work in hand but doing it belatedly that its value to client is diminished or lost;
- (h) Slipshod work, such as mistakes or omissions in statements or documents prepared on behalf of the client;
- (i) Failure to maintain office staff and facilities adequate to the lawyer's practice;
- (j) Withholding information from the client or misleading the client about the position of a matter in order to cover up the fact of neglect or mistake;
- (k) Failure to make a prompt and complete report when the work is finished or, if a final report cannot be made, failure to make an interim report where one might reasonably be expected;
- (l) Self induced disability, for example from the use of intoxicants or drugs, which interferes with or prejudices the lawyer's service to the client.¹¹

The above list of conduct, that diminishes the quality of legal services, serves as the benchmark upon which monitoring of quality of legal services is done. Usually the laws on quality of legal services establish organs and institutions to monitor the compliance with the rules by the members of the profession.¹²

3.0 Empirical Evidence Relating to Quality of Legal Services in Tanzania

The empirical evidence on law relating to quality of legal services offered by advocates in Tanzania Mainland was collected by Eventius Mugyabuso between

¹¹ For a detailed discussion on legal ethics generally and quality of legal services in particular, see Hutchinson A., *ibid*, fn 10.

¹² The institutional framework will concentrate mainly on the Council for Legal Education and Continuing Legal Education Committee. Other institutions such as the Remuneration Committee and Advocates Committee are not discussed in this paper.

September 2015 and November, 2016.¹³ Documentary review, unstructured interviews and questionnaires were used to collect relevant information on the subject from advocates' clients (consumers), advocates, judges, magistrates, Court Registrars and Law Lecturers.¹⁴

In the process of collecting data consumers were divided into two groups: corporate and individuals. A total of thirty-three employees from legal departments of the Corporates from Dar es Salaam, Mwanza, Mbeya, Kilimanjaro and Arusha were interviewed.¹⁵ Their responses on the quality of legal services are nearly homogenous. They concede that the quality of legal services offered to them is of the required standard.¹⁶ The quality referred to is in relation to delivering the quality services in time and keeping the clients informed of all the steps which are usually undertaken.¹⁷

There are various reasons which make corporate consumers to enjoy the best legal services. Among these reasons is that the corporates prefer to engage firms as opposed to individuals. In some of the cases these corporates get the best legal firm through the process of tendering.¹⁸ The advantage of engaging the firms is that the firms have the requisite pool of professionals who by combining their different skills, are able to give the best solution to the clients' problems.¹⁹

The other reason which contributes to offering of quality legal services to the corporates is the presence of the monitoring mechanism. All the corporates which were involved in this study have legal departments which are well staffed with lawyers/advocates. Some of the employees in these departments have the high level of academic qualifications and others have a wide experience in law.²⁰ These lawyers from these departments act as quality assurance monitors for the work which is assigned to private advocates and/or firms. In a situation where a private advocate/firm is assigned a case, that advocate is sometimes accompanied by the legal officer from the corporate to watch the brief. Therefore, private advocates who are assigned or engaged by corporate bodies are always

13 In legal research "empirical evidence" denote data or evidence obtained from the field research on how the problem under study exists in a particular society, the manner it is perceived and the methods which are used to get rid of it. See Baldwin J., and G. Davis, 'Empirical Research in Law,' in *the Oxford Handbook for Legal Studies*, Cane P., and M. Tushnet, (eds.) (Oxford University Press, 2003), p. 881. See also Chui W., and M. McConville, (eds.), *Research Methods for Law*, (Edinburg University Press, 2010), p.6.

14 Data were collected from five regions. These are Arusha, Mwanza, Kilimanjaro, Dar es Salaam and Mbeya. The criterion for selection of the said regions was based on the available number of advocates and consumers.

15 Corporates which were involved were CRDB Bank, National Microfinance Bank (NMB), National Bank of Commerce (NBC), Tanzania Investment Bank (TIB), Tanzania Women Bank, Tanzania Postal Bank (TIB), Vodacom Tanzania Ltd, National Social Security Fund, LAPF and TANESCO.

16 There are very few exceptional cases relating to poor legal services being offered to corporate. See the case of *Calico Textile Industries Ltd v. Pyalaliesmail Premji* [1983] TLR 28.

17 In the case of litigation, quality legal services does not denote winning a case but it is either settling it or defending to the level that an ordinary professional advocate could do.

18 Tendering is one of the processes of selecting a supplier of services/ goods from a number of interested applicants. It is a method leading to procurement of goods and services. The essence of bidding is to enable consumers enjoy the best services/ goods at a reasonable price i.e., value for money.

19 For purposes of delivering quality services, the advantage of having a pool of professionals is dependent on other factors such as transparency in managing the affairs of the firm, commitment of the members of the firm and the various knowledge resources available in the firm. See Rwechungura C., 'Developing Viable Partnerships in the Legal Profession,' in *60 Years of Advancing Justice and Rule of Law From 1955-2015*, (eds). C. Binamungu & A. Makulilo, (Dar es Salaam: TLS, 2015), 109 at 114.

20 Some of these lawyers have masters degrees in various areas, more specifically law and human resources management. Many of these lawyers happened to practice as private advocates before being employed, Others are still practising while performing their employers duties,

delivering high quality services because they know that their clients, through their legal departments, have the means of monitoring and accessing the quality of the services offered.

Associated with the above, the advocates/ firms offer quality services to corporates because of the incentive available. The basic incentive is the high rate of fees that corporates are able and ready to pay. Unlike natural persons who prefer negotiation on the mode of payment of fees, corporates have the best method of paying the fees. Some corporates pay fees in the form of retainership, others pay in the form of instalments calculated on the completed work and others pay the full fees on engagement.²¹

The high standard of quality of legal services is also enjoyed by middle and high-class persons. Most business men and rich persons confirmed that they are always getting the best legal services from the advocates. This situation is explained by the fact that they are capable of paying the requisite fees in time and in full. The advocates therefore try as much as possible to satisfy the needs of such clients for the fear of losing them. On the other side, the high and middle-class persons form a base of permanent clients. Most of these are engaged in activities or businesses which require the services of the advocate frequently. They are again capable of bringing in new clients. Therefore, advocates consider losing a middle or high-class client as losing a lucrative business.²²

With few exceptions, the quality of legal services offered to the poor is inadequate.²³ This poor class of clients is divided into two groups, one group is that of the poor who cannot pay fees in full at once, they are able to pay fees in instalments and sometimes they are ready to sell part of their interest in the matter in lieu of fees. The other group of the poor class involves persons served under the voluntary or mandatory legal aid schemes.²⁴ Most of the poor respondents have, during the research identified a litany of problems they encounter when they are seeking legal services. These problems relate to either abandonment or non-appearance and request for adjournment when the cases come up for hearing.²⁵ Other

21 Rwechungura C., *Op cit.*, fn 19 at p. 110.

22 Finnegan D., 'Judicial Reform and Commercial Justice: The Experience of Tanzania's Commercial Court' Background Paper Prepared for the World Development Report, 2005. See also Jayawickrama N., 'The Bangalore Principles of Judicial Conduct' in *Law and Justice in Tanzania: Quarter of a Century of the Court of Appeal*, Peter M and K. Hellen (eds.), (Mkuki na Nyota Publishers, DSM, 2007), p. 265; Caldeira J. 'The Rule of Law and Independence of the Mozambican Judiciary', 1 *Journal of Tanganyika Law Society* .3, (2007), p.93 and; Mkapa W. 'The Legal System Should be More Accessible to More Tanzanians' in *Law and Justice in Tanzania: Quarter of a Century of the Court of Appeal*, Peter M., and K. Hellen (eds.) (Mkuki na Nyota Publishers, DSM, 2007), p. 33.

23 Jayawickrama N., *ibid*, fn. 22 p. 265 and; Mkapa W. *ibid*, fn 22, p. 33.

24 Voluntary legal aid schemes are run by the Tanganyika Law Society, the Non Governmental Organisations and the University of Dar es Salaam School of Law. Also some of the firms and private advocates undertake legal aid services as part of their social responsibility. Mandatory Legal Aid is in respect of dock briefs assigned by the Chief Justice to advocates. For a detail discussion on the legal aid schemes see Omari A. 'The Current Situation of Legal Aid Provision in Tanzania', pp.1-3; Mkumbukwa N., 'Thoughts on the Mandatory Legal Aid in Criminal Proceedings in Tanzania' in *Wakili Bulletin*, November, 2014. p.11.

25 The key reason which has been given as leading to abandonment or frequent application for adjournment is that once the clients have paid the first instalment of the fees, they either refuse or fail to pay the next instalments. For cases involving legal aid, consumers are abandoned or advocates do not appear frequently when the cases are scheduled for hearing because they do not have a financial incentive for appearance. Advocates consider the fee for a dock brief, which is current Tshs 100,000/= per case as a joke leave alone and a little per diem rate of Tshs. 80,000/- per day for cases requiring an advocate to travel outside his work station. See Mkumbukwa N., *ibid.*, fn 24, pp.11-12.

problems relate to loss of the fees or part of the fees already paid to an advocate and; appropriation of the whole or part of the proceeds of a decree. Most of the complaints that have been lodged in the Ethics Committee of Tanganyika Law Society and the Advocates Committee are from the class of poor persons.

In the interview made with the officials of the judiciary (judges of the High Court and High Court registrars), they all confirmed that there exist two categories of advocates. The first category consists of advocates who are devoted to their clients work. They comply with the schedule that is set for taking various steps such as filling of pleadings, submissions and other documents. The second group consists of laissez-faire advocates. This category of advocates is always behind the time schedule set by the court for taking various steps. They are characterised by litany of applications requesting for extension of time to take various legal steps, they do not appear when their cases are called for hearing and; when they appear, they are always not prepared and; others attempt to pray for adjournment on the ground that the file is misplaced in their offices. The judges have been hesitating to use their inherent powers to discipline these advocates. As a result, consumers remain with no means for their protection against these mischiefs.

Therefore, on the basis of the consumers' responses, the quality of legal services depends on the number of factors. These factors include the institutional design for monitoring the quality, willingness of the courts (judges and magistrates) to take intervention measures against laissez-faire advocates, ability of the consumer to assess the quality and, station of life or ability to afford quality services.

4.0 Law on Quality of Legal Services in Tanzania Mainland

The Constitution of the United Republic of Tanzania does not provide for the rights of consumers generally. It does not also provide for the rights of consumers of legal services in particular. Although article 13 of the Constitution provides for among others equality before the law and a right to a fair trial; that article does not in itself constitute expressly even a right of adequate representation leave alone a right of quality legal services. Tanzania is undertaking Constitutional Reform which aims at among others enhancing national and peoples' legal, social, economic and political development. These goals are contained in chapter two and five of the Proposed Constitution of October, 2014. Surprisingly, there is no provision in the said proposed constitution which provides for the rights of the consumers generally and; consumers of legal services in particular. Therefore, a right to quality legal services is not a constitutional right.

Further, neither the Advocates Act nor the Tanganyika Law Society Act imposes a duty on advocates to provide quality legal services to their clients. The reason which is frequently given for this lacuna is that unlike the cases involving goods where quality standards are easily set by describing the ingredients, composition and ratio as for example in the cases of pharmaceuticals, drinks and foods; it

is difficult to set quality standards of legal services.²⁶ This is because quality standards of legal services depend on a number of factors such as ability of the consumer to clearly state his needs so that the advocate provides a requisite solution; ability of the consumer to afford the services and; the ability of the supplier to give a requisite solution, i.e., the ability of the advocate to put in use the professional skills he possesses.

Although there is no provision in the law providing for quality standards of legal services, the courts have developed a test that assist in determining the same. That is a test of *a reasonable and qualified attorney/advocate*. Under this test, an advocate/attorney is expected to offer quality legal services which any reasonable attorney/advocate skilled in his profession would offer in the similar circumstance. The reason behind this position is based on the logic that when an attorney is employed for either a reward or otherwise, he impliedly undertakes to possess and exercise reasonable skill in his profession.²⁷

In East Africa, there are few decisions which have set a precedent on the test of the reasonable lawyer/attorney. Most of these cases were decided by the East African Court of Appeal for cases originating in Kenya and Uganda.²⁸ The notable case is of *the Insurance Company of North America v. Baeriem and James*.²⁹ In this case the plaintiff sued the defendant (an advocate) for damages for breach of contract. The plaintiff claimed shillings eight thousand nine hundred thirty three hundred and fifteen cents (Shs. 8,933/15) being cost incurred in an unsuccessful suit.

Prior to this suit, the plaintiff had consulted the defendants (i.e., advocates) in relation to the sum of money due to them from their agent, one Howitt, at Kampala Uganda. It was agreed that the sum which represented premiums collected by Howitt for the plaintiff would be treated as a loan to him and its repayment would be secured by a bill of sale, the assignment of two life insurance policies and, a guarantee by Mrs Howitt. The defendants (advocates) were instructed to prepare necessary documents, which they did. A bill of sale was prepared embodying a list of chattels including a car, which was to be bought in a future date. In the guarantee, the bill of sale was treated as the consideration.

26 For the cases of the manufactured goods, the view that, because manufacturers are in a more advantaged position, they have a duty to take special care to ensure that consumers interests are not harmed by the product that they offer them. In order to protect the consumers from injuries which may result from manufacturing defects, design defects, warning defects, instruction defects, development risks defects, state of art defects, post marketing defects and system damage defect, the law (or the consumer protection authorities) provide for guidelines on the standard of quality of the goods to be manufactured. See *A and others v. National Blood Authority* [2001]3 All ER 289; *Donoghue v. Stevenson* [1932] AC 562.

27 *Harmer v. Cornelius* (1858)5 CBNS 236 at 246.

28 Twaib maintains that the standard applicable to advocates for the cases involving incompetence, negligence and breach of duty in the professional capacity is the same as that standard applicable to other professions like the medical profession. He refers to the case of *Theodelina Alphaxad, Minor s/t Next Friend v. the Medical Officer Incharge, Nkenge Region*, Civil Case No.14 of 1991 HCT at Tabora where Katiti J, cited with approval the case of *Sidaway v. Board of Governors of Bethlem Royal Hospital and Mudsley Hospital* (1985) A.C 871; (1985)1 All ER. 643 (H.L) where it was held that it was settled English Law that when a doctor decided what he ought, or ought not, to tell his patient about the risk of the proposed procedure, the lawfulness of what he does will be principally judged by tests found on the evidence of appropriate contemporary standards of professional care. For a detailed discussion on the professional skills and care see Twaib F. *the Legal Profession in Tanzania: the Law and Practice*, (Dar es Salaam University Press, Dar es Salaam, 1997), p.275.

29 (1960) E.A 993 cited from Kinemo R and A Nyamwangi 'the Tort of Negligence on Advocates in Tanzania, p.11 & 12 (Unpublished paper).

Subsequently, the plaintiffs sued Mr. Howitt to recover the loan. When they were unsuccessful, they decided to sue Mrs. Howitt under her guarantee. The action was dismissed too. The High Court held that the bill of sale was void and that the guarantee was void for want of consideration. The bill of sale was void for non-registration in time and it was not in the proper form as not all the chattels set out in the schedule were capable of identification. Further, the bill of sale purported to assign the car in the future was declared to be void.

Having lost in the two actions, the plaintiff decided to sue the advocates who advised and prepared documents which in turn were defective for being in contravention of the law (lack of consideration and non-registration and; uncertainty of the terms in the documents prepared by the advocate). The cause of action in this matter was based on negligence and failure to exercise reasonable skills. The court decided as follows:

‘The standard of care and skill which can be demanded from the solicitor is that of a reasonable competent and diligent solicitor. Lord Ellenborough has said: an attorney is responsible for *crassa negligentia*. Again, Lord Campbell in discussing the essential elements to sustain an action of negligence said: what is necessary to maintain such action? Most undoubtedly that the professional advisor should be guilty of some misconduct, some fraudulent proceedings or should be chargeable with gross misconduct or gross negligence. It is only upon one or the other of those grounds that the client can maintain an action against a professional advisor. This however, does not mean that the standard of care imposed on other professional men; it only means that it is not enough to prove that the solicitor had made an error of judgement or shown ignorance of some particular part of law, but that it must be shown that the error or ignorance was such that an ordinary competent solicitor would not have made it.’

Having established the above principle on the standard of care and the manner the advocate is expected to discharge the services to his client, the court proceeded to hold that the security of the bill of sale was not in proper form and, that the negligent drafting and defects in the bill of sale and guarantee went beyond an error of judgement and constituted professional negligence for which the appellants were liable to pay damages.³⁰

Three years after the Insurance Company of North America case there came the case of *Kirima Estates (U) Ltd v. Korde*.³¹ In this case, the defendant (advocate) was engaged by the appellant's company to advise him (appellant) on the value of the mortgage to be accepted. The advocate advised the appellant company to accept a mortgage which he valued at shillings one hundred and twenty thousand (shs. 120,000/-) in return for which the appellant company gave shillings sixty thousand (shs. 60,000/-). The mortgage, however, failed to pay and on selling the

30 Kinemo R and A Nyamwangi *Ibid.*, fn 29, pp.11 & 12.

31 (1962) E.A 22 cited from Kinemo R and A Nyamwangi *ibid.*, pp.12 & 13.

mortgage the appellant could only recover forty five thousand shillings (shs. 45,000/-). They consequently filed an action against the advocate. The cause of action was based on negligence for failure to advise them correctly on the value of the property. It was argued that the charge of negligence was supported by the failure of the advocate to engage qualified surveyors or estate agents to assess the property and make local inquiries as to the value of similar properties in the said area.

The court held that the property was not adequate security for sixty thousand shillings at the time the loan was given. Consequently, in assessing the value of the property at shillings one hundred and twenty thousand the defendant (advocate) had failed to exercise due care, skills and diligence expected of him in the discharge his duty to the plaintiff company as his client. He had failed to make inquiries as to the value of the property and also failed to engage services of a surveyor or estate agent thereby failing to have a proper valuation of the property made before advising the client. Therefore, on the evidence, the defendant was not only negligent in the discharge of his duty but also committed a breach of that duty.³²

On the basis of the cases referred above, there is no uniform standard on quality of legal services. The question of the standard of quality of legal services depends on the circumstance of each case. That notwithstanding, failure on the part of an advocate to exercise reasonable skills in handling clients' issues imply failure to offer quality services. Where an advocate drafts a defect pleadings, written statement of defence, petition or any other document; that amount to poor legal services because any ordinary advocate is expected to possess skills relating to drafting pleadings and other documents.³³

The quality standard of legal services is impliedly determined by the ability of the advocate to comply with the law in offering the services to the consumer. Compliance with the law comprises drafting pleadings, opinion and other document in line with the law; appearing in court on the dates scheduled, being prepared and organised, keeping the clients document and fees in compliance with the law and; keeping the client informed of all steps and progress that are made in relation to his matter.³⁴

In consumer protection, quality control of goods and services is monitored at among others two points: at the production of the goods and services (production point) and; at the entry point of the goods/services in the market (distribution point). Due to various reasons leading to the difficulty in setting the quality standards of legal services explicitly in the law, the law has established the mechanisms of ensuring that those who wish to join the legal profession as suppliers of legal services are competent and they keep being competent even after being allowed entry into the market. This has necessitated the establishment of statutory institutions and vesting them with statutory powers of performing

32 For the detailed discussion on the two cases from the East African Court of Appeal see Kinemo R and A Nyamwangi, Op cit., p.12 & 13.

33 Lugaziya J., 'Professional Ethics for Lawyers: Are They Damocles' Sword Over Law Practitioners?' 1 *Tanzania Lawyers Journal* 1 (2015), p.63 at p. 90.

34 See Kinemo R and A Nyamwangi, Op cit., fn.29, p. 11.

this role of monitoring the quality of persons who wish to join the market as providers of legal services (petitioners) and those who have already joined the market (advocates). The parts that follow hereunder discuss these institutions established under the Advocates Act and the Tanganyika Law Society Act.

5.0 Institutional Framework for Monitoring the Quality of Legal Services

An effective consumer protection system is based on statutory institutions which are mandated to oversee and take legal measures necessary for the protection of the consumers. These institutions operate on the principles of cooperation and coordination. This is important for purposes of avoiding conflict of interest that may arise among the consumer protection institutions themselves.³⁵ In Tanzania Mainland a primary duty of protecting consumers of legal services is entrusted to among other institutions, the Council of Legal Education and Continuing Legal Education Committee.

5.1 Council for Legal Education

The Council of Legal Education is the heart for the sound legal profession in Tanzania. This is in regard to its primary functions and duties. This part therefore discusses briefly the role, strength and challenges of the Council in monitoring the quality of legal services.

5.1.1 Role of the Council in Monitoring Quality

The Advocates Act provides for two functions of the Council. These are, to exercise the general supervision and control over legal education in Tanzania and; to advise the government in relation to supervision and control of legal education in Tanzania.³⁶ The functions of the Council are not limited by this Act only. The Act recognises other functions of the Council as they may be provided by any other law.³⁷

The importance of the Council in monitoring the quality of legal services cannot be underestimated. Consumers of legal services; like any other group of consumers; have a right to quality services supplied by qualified persons. The Council therefore occupies a first position in the hierarchy in terms of functions leading to protection of consumers of legal services. The role of the Council is to assess the quality of the prospective supplier of legal services (i.e., petitioner) before he is allowed entry into the market.³⁸ It assesses the competence and skill necessary for one to be admitted as an advocate. In this sense, the level of quality control and monitoring of legal services depends largely among others, the efficiency of the council in performing its role of ensuring that entry in the market is only allowed

35 Miller D., "Competition and Consumer Protection: The Relationship in Practice in Jamaica" 5th IDRC PRE-INC Forum on Competition and Development, cited by Teseme E. Op cit., p.20.

36 Advocates Act, Cap. 341, section 5B.

37 Section 5A of the Act reads as follows " the functions of the Council shall be to exercise the functions conferred upon it by or under this or any other law and to exercise general supervision and control over legal education in Tanzania for the purposes of this Act and to advise the government in relation thereto."

38 This role is like that of the authorities (e.g. TBS) which determine the quality of the goods by testing and experimentation before granting licence for supplying the same in the market.

to persons with requisite legal knowledge and skills.³⁹ The question which lies is how the Council has discharged its functions. This takes us to the practical strength of the Council which is discussed hereunder.

5.1.2 Strength of the Council in Monitoring the Entry in the Legal Market

The practical strengths of the Council are many. In this part we look at a few of them that have emerged to be noticeable. There are no major achievements made by the Council between 1963 when it was established under the Advocates (Amendment) Act to 1990. The main reasons for lack of major achievements in the period above referred relate to among others ambiguity of the law and administrative challenges.⁴⁰ In this period the Council concentrated on conducting interviews to applicants who aspired to be advocates.⁴¹ Little was done in supervising and controlling legal education offered in Universities and out of the Universities (internship).⁴²

The Council started to occupy its position effectively in late 1990's when there was the establishment of some Institutions offering Laws Programmes.⁴³ The establishment of institutions offering law programmes laid a foundation for the increased number of petitioners for admission in subsequent years.⁴⁴ With this increase the Council, between 2000 and 2014, has made two noticeable achievements which impliedly lead to monitoring and controlling the quality of legal services. These are increased number of interview sessions aiming at clearing of the backlog of the applicants for admission as advocates and inspection of the institutions offering the law programmes.⁴⁵ Both achievements are important in the aspect of protection of consumers of legal services as they determine the qualitative and the quantitative availability of legal services. As a result, the number of advocates increased from 1731 in 2010 to over 5,000 by December, 2015.

39 The right to practice is only available to a person who is qualified by his learning and his moral character. See the case of *Baird v. State Bar of Arizona*, 401 U.S. 1 (1971) cited from Brian D. 'Admission to Legal Practice, the Un-authorised Legal Practice of Law and, Legal Specialisation in Uganda' available at <http://ssrn.com/abstract> (accessed on 19th September, 2016). See also Slabbert M., 'The Requirement of Being a Fit and Proper Person for the Legal Profession' 14 *PER/PELJ*, Volume 4, (2011), p.209 at p.210. This article is available at <http://dx.doi.org/10.4314/pej.v14i4.7> (accessed on 25 December, 2016).

40 As part of administrative challenges, the Council does not have either secretariate or personels who are occupied with the performing administrative functions of the Council. The administrative functions of the Council such as compilation of the records for purposes of the meeting of the Council are performed by persons who are not by virtue of their employment charged to do such activities. See also Twaib F., *Op cit.*, fn 28, p.178.

41 In this period the number of applicants for admission as advocate was too small. This was because many graduates of the then Faculty of Law University of Dar es Salaam were few (and some belonged to other East African Countries). The remaining small number of Tanzanians were absorbed in the public sector. For a comprehensive discussion on admission into the University, advocates admission and qualifying process see Twaib F., *Op cit.*, fn 28, Chapter Five at p.218; Rwelamira M. 'The Tanzania Legal Internship Programme: the New Horizon in Legal Education' *Africa Law Studies*, (1977), p.29 at p.32.

42 Rwelamira maintains that some of the aspects of legal education which were either ignored or not appreciated was the internship programme. See Rwelamira M. *Op cit.*, fn 41, p.29.

43 As of 2013 there were five universities offering Bachelor of Law programs. For more details see Mandopi, K., 'The role of Advocates in the Dispensation of Justice' 1 *Journal of Tanganyika Law Society* 1, (2013), p.24 note 58.

44 On the other side, the liberalisation of legal education which resulted into the establishment of many institutions offering Bachelor of Law programmes contributed to the expansion of the waiting list of petitioners for admission on the roll of advocates. This was also associated with the Council's practice of conducting interviews only twice or sometimes once in a year.

45 Other achievement include the consolidation of the three volumes of the Roll of Advocates into one volume. The first volume started with the name of Mahadeo Parashuram Chitale admitted on 14th January, 1921, the second volume started with the name of PR Dastur who was admitted on 20th April 1931 and the third volume started with the name of Mahadh Juma Maalim admitted on 10th August, 2011. All these rolls have been consolidated to one roll of April, 2014.

Basing on the above statistics there emerges a relationship between the increased number of advocates and monitoring of the quality of legal services. When the number of advocates increases, automatically that leads to the application of the economic rule of competition.⁴⁶ That is; when the number of advocates increases, the ratio between the number of consumers of legal service and the available number of advocates decreases. Therefore, instead of the consumers competing for the advocates (suppliers of services), advocates compete for consumers by adopting strategies of attracting the consumers to themselves. One of such strategies is to improve the quality of services.⁴⁷ The other strategy is to shift from general practice to specific practice which is based on specialisation. Due to this shift, for example in Dar es Salaam, the number of legal firms increased from about 12 firms by 1990 to 295 by August, 2015.⁴⁸ The firms are used partly as a form that expresses specialisation. Many firms have websites and staff cars painted with names of the firms and their areas of specialisation.⁴⁹ This is a means of among others attracting the consumers and improving quality of services.⁵⁰

5.2 The Practical Challenges of the Council in Monitoring Quality of Legal Services

The Council is recorded to have faced the challenge of supervising and controlling the quality of legal education at a lower level. The lower level of legal education includes LL.B. programmes, pupillage, internships, externships and practical legal training.⁵¹ The number of universities offering law programmes has increased tremendously in the last few years. Again, the number of students admitted in such universities has also multiplied. The rapid expansion of university education responding to the needs of the liberalised economy has left the Council of Legal Education far behind in so far as its general power of supervision and control over legal education offered in universities is concerned.⁵²

46 This theory is to the effect that in order for producers to survive they are to sell their goods to consumers. They will only be able to sell to consumers what consumers want to buy. Consumers preference will dictate what is made available. Producers compete and Consumers choose. The invisible hand of producers behaving in response to consumers preference organises the market. The survival instinct among producers which is instilled by the mechanism of competition will ensure an efficient allocation of resources. Given the stimuli of competition, resources will not be wasted. Production will stand in equilibrium with consumption. For a critical analysis of the rule of competition and perfect market See Howell G., and E Weatherill, *Consumer Protection Law, 2nd edition*, (Ashgate Publishing Ltd, Ashgate, 2005), p.2.

47 The improvement of the quality of services sometimes goes with the reduction of prices. The economic theory of competition is therefore to the effect that the competition scenario is an automatic process resulting from the scarcity of consumers. Suppliers therefore have to employ every possible tactic and trick- positive or negative to win the consumers attention. See Tenga W., 'Consumer Protection in Tanzania: Challenges and Prospects for the National Consumer Advocacy Council (NCAC).' (Unpublished paper).

48 These numbers of firms are a result of the research done by Tanganyika Law Society for purposes of establishing a directory of Law Firms for Dar es Salaam Chapter. Generally there are many law firms in Dar es Salaam although their status in terms of number of partners, their resources and structure remains un-researched. See a report released by the TLS on 15th November, 2015 on the existing Law Firms in Dar es salaam.

49 Looking on the advertisement made by these firms on their website or other means as painting staff cars, many firms seem to have specialised in law relating to Commerce, Real Estate, Mining, Oil and Gas, Arbitration, Taxation, Conveyance, Banking, International Trade and Finance, Mergers and Acquisition. Other laws especially Criminal Law, Child Law, International Law, Islamic Law and others seem to have been not preferred by many firms.

50 This posits a rule on advertisement. It is a means of informing the consumers of the services offered by the respective firms.

51 For a detailed definition of the term "legal education" and its levels see Ojwang, J., and D. Salter 'The Legal Profession in Kenya' 34 *Journal of African Law*, 1, (1990), p.9 available at <http://www.jstor.org/discover> (accessed on 11/7/2015). See also Juma I., 'Discussion Paper on Drafting Instructions for the Proposed Council of Legal Education Act' a paper submitted to the Annual General Meeting of the Tanganyika Law Society held at the Institute of Rural Development and Planning, Dodoma, 23rd February, 2013.

52 Juma I., *Ibid*, fn 51, p.3.

The Council, between 2013 and early 2014, was able to visit only one institution offering the LL.B. programmes, i.e. Moshi University of Cooperative. In the said period, the target was to visit at least three institutions. During the inspection of the said institution; it was discovered that there were various shortcomings which in turn affect the quality of legal education. It was discovered that there were no enough academic staff and that some important modules like taxation were not taught. In the period between February, 2014 and February, 2015 the plan was to visit not less than ten institutions/ universities if the financial resources so permitted.⁵³ Up to August, 2014 no single university/ institution had been visited.⁵⁴

Further than not, there are also institutional challenges relating to practical training which the Council has failed to address. Currently there are thousands of law graduates who are on the waiting list to join the Law School of Tanzania for their compulsory practical training. Those who manage to get admitted into the law school sometimes face the problem of attachment to the judiciary, attorney general chambers and the firms.⁵⁵ The Council has so far not been able to solve the increasing problems relating to practical training. It has instead, vacated its role and left other actors, i.e. Attorney General Chambers, Judiciary and private legal practitioners to design solutions in their separate compartments.⁵⁶

Those who manage to get the attachment to either the Attorney General Chambers, Judiciary or Private firms face the problem of supervision. In the Attorney General Chambers the interns are not attached to specific advocates or state attorneys. They are only attached to specific department without being assigned to specific persons who would make sure that each intern always has something to do. As a result, interns are in dilemma on a person to consult in case they face any difficult.⁵⁷ The observation made in Kisutu Resident Magistrate Court in April, 2015, each magistrate had the minimum of three interns. In the survey made into the law chambers at Dar es salaam in the same period two things were observed. There were interns who were attached to firms which made sure that the interns had something to keep them busy all the time. There were also interns who were attached to firms or advocates who did not bother in taking initiative of training

53 Report of the CLE to the annual General meeting of the Tanganyika Law Society held at AICC- Arusha on 22/2/2014; p.2.

54 Report of the CLE to the Half General meeting of the Tanganyika Law Society held at AICC- Arusha on 18/8/2014. The reason given for the failure to visit the universities is financial constraints.

55 Explaining the process of professional training in Tanzania Mapunda maintains that arrangement to get placement for practical training is left to individual students. They have to knock on the doors of practising advocates and plead to be taken as pupils. The lucky ones get placement. and many do not. See Mapunda, A., 'Standardising the Criteria for Admission to Practice Law in East Africa,, Tanzanians' in *Law and Justice in Tanzania: Quarter of a Century of the Court of Appeal*, Peter M., and K. Hellen (eds.) (Mkuki na Nyota Publishers, DSM, 2007), p.277 and p.284.

56 Juma I., *Ibid.*, fn 51, p.3.

57 This problem of supervision seems to have been too old. In 1977 Rwelamira indicated that the interns who were attached to the Attorney General's Chamber were not under any supervision. Some interns complained of having no work to do; others complained that the work was repetitive, further more, advocates may be away upcountry, if this happens to whom does the intern go? Had he been attached to an individual advocate at the litigation department, that advocate could arrange to take him along on his travel. See Rwelamira M., *Op cit.*, fn. 41, p.37.

them.⁵⁸ Some interns in some cases absented themselves for some days without giving notice. On their return, nobody bothered to question them on their absence.

The consequence of all of the above is that there are petitioners who get admitted as advocates without undergoing the proper training. On practical training, Mapunda maintains that the students instead of undergoing proper pupillage, some simply ask advocates to issue them with certificates of pupillage.⁵⁹ The advocates who are a result of this system will normally fail to understand their clients' needs and offer the requisite solution.

The Tanzania situation is somewhat similar to the situation existing in other jurisdiction such as Nigeria, India, United States of America and England.⁶⁰ In Nigeria for instance, there are hues and outcries on the decline of quality of legal services resulting from the decline of legal education. Some consumers of legal services have gone further and expressed their doubt on whether these lawyers pass through the universities and the law schools.⁶¹

It is submitted that the lawyer can be as good as the system of legal education that produced him legal education – academic and vocational.⁶² Training is a science. Any deficiency in that science affects subsequent levels. According to Confucius the great Chinese philosopher and social reformer who lived about five hundred years before the birth of Jesus Christ said “*in all things success depends upon previous preparation and without such preparation there is sure to be failure.*”⁶³ Other challenges facing the Council include lack of institutional independence, poor staffing and poor budgetary allocation. All these have a significant impact on consumers of legal services.

Recognising the challenges of the Council in monitoring the quality of legal education and the resultant impact on the quality of legal services, various efforts are made to address these deficiencies and challenges.⁶⁴ Such efforts include the transformation of the Council of Legal Education into an autonomous organ. This transformation is contained into the proposed Council of Legal Education Act.

58 Rocha discusses the requirement for an effective pupillage. He says that an effective pupillage requires a well organized chamber, well equipped with tolerably good library and senior advocates who are willing to undertake the guidance of new lawyers. See Rocha B., 'The Future of Professional Legal Education in Ghana' 1 *Ghana School of Law Journal*, (2002), cited from Manteaw S., 'Legal Education in Africa: What Type of Lawyer Does Africa Need?' 39 *McGeorge Law Review*, (2008), p.903, at p.934.

59 Mapunda, A., *Op.cit.*, fn 55, pp.282-284.

60 For the cases of India, USA and England see Chandra K., 'Legal Education and Legal Practice in India' 36 *International journal of Legal Information* 2, (2008); Sandra K., 'Legal Education in the United States and England, a comparative analysis', *Loyola of Los Angeles, International & Comparative Law Review*, (1991), p. 601, at pp 617-625. Onolaja M., 'Problems of Legal Education in Nigeria', a paper presented at the Nigeria Bar Association meeting, 2008.

61 Salman R., and O. Oluduro 'Towards Practice Oriented Vocational Legal Education in Nigeria' 2 *Ilorin Bar journal*, volume 2, (2001), p.6.

62 Onolaja M., *Op cit.*, fn 60.

63 Samatta B., "Striking a Reasonable Balance Between Freedom of Individual and the Security of the State" in *Law and Justice in Tanzania: Quarter of a Century of the Court of Appeal*, Peter M and K. Hellen (eds.) (Mkuki na Nyota Publishers, DSM, 2007), p. 27.

64 For a detailed discussion on the relationship between quality of legal services and legal education see Tahir M., "A Review of the framework of legal Education in Nigerian Universities", *Op cit.*, p 8.

5.3 Proposed Council for Legal Education Act and its Impact on Quality of Legal Services

We have indicated above that the Council of Legal Education has been facing a number of challenges relating to ambiguity of the law and lack of the definition of the term “legal education”. All these and other factors have prompted for the need of enacting an Act which can provide in the broader terms all matters relating to legal education in Tanzania.

The first step towards enacting an Act which can solely deal with Legal Education in Tanzania took off and involved the drafting of instructions for the proposed Council of Legal Education Act which could actually result to a bill titled “*the Bill for an Act Entitled Council for Legal Education Act, 2010.*” The scope of the instructions took in account the problems, challenges or issues which a revised Council of Legal Education would be expected to deal with. These instructions were also designed to highlight benefits that are likely to result from new proposed legal framework. The instructions set out the possible principal objectives of the proposed Council of Legal Education Act and left the Chief Parliamentary Draftsman to translate these into appropriate piece of legislation.⁶⁵

The draft instructions contained seventeen matters which were intended to be dealt with by the re-established Council of Legal Education. All the seventeen matters can be grouped into three categories. The first category relates to factors intended to set standards of the legal education in Tanzania, the second category involves factors/ strategies intended to monitor the compliance with the standard and the last deals with the financial aspect of the Council.

The first category of factors which intended to set the standards of legal education include setting standards of legal education to be complied with by universities offering bachelor of law degree for purposes of joining legal practice in Tanzania; setting criteria for recognition of degrees in law offered by institutions outside Tanzania; cooperate with Tanzania Commission for Universities on accreditation of Bachelor of Law degree programmes of universities; prescribe compulsory courses/ subjects to be offered by the institutions offering academic legal education, practical legal education and continuing legal education; and, designing of compulsory continuing legal education courses, subjects and themes.⁶⁶

The second category which involves factors/ strategies intended to monitor the compliance with the standard include identifying the ever changing needs of the legal education for Tanzania and periodically suggest to the government broad range of solutions instead of leaving such actors in the legal education such as universities, Attorney General Chambers, Judiciary, private legal practitioners to separately design solutions in their separate compartments; carry out periodic inspection of universities offering bachelor of law degrees to verify their compliance with the standards; and, call for relevant records, documents, and correspondences of institutions offering academic legal education, practical legal education and continuing legal education to evaluate the competence of the relevant institutions to offer the courses relevant for legal education purposes.⁶⁷

⁶⁵ Juma I., Op cit., fn 51, p.4.

⁶⁶ *Ibid.*, pp.20-22.

⁶⁷ *Ibid.*, pp.20-22.

Other factors connected with the above include visitation power of institutions offering academic legal education, practical legal education and continuing legal education to inspect buildings, lecture rooms, theatres, law libraries, halls of residence and all other places as may be required by the inspection team; stipulate minimum standard infrastructure facility by institutions offering academic legal education, practical legal education and continuing legal education. The inspection power of the council would base on initial, and regular.⁶⁸ Institutions offering academic legal education, practical education and continuing legal education shall get certification of the Council before admitting any student to undertake training of any component of legal education; establishing the committees of the Council,⁶⁹ establishing the fully fledged secretariat of the Council to carry a day to day activities of the Council and its committees; and, to keep and maintain the roll of advocates and legal practitioners.⁷⁰

The third category involves the financial aspect. The Council is to maintain a fund for receiving contributions from all legal practitioners and design policy on how the fund is to be utilised.⁷¹

The draft instructions listed above seem to lead to the conclusion that the resultant law would be very comprehensive in content. The setting of quality standards and the strategies for monitoring the compliance of the standards is a bottom-line towards ensuring that persons inspiring to join the private legal practice are going through a process which equips them with requisite skills and experiences that are necessary to deal with multiple needs of their clients. The draft instructions therefore seem to point or lead to a solution to problems associated with quality of legal services which have been facing the consumers of legal services.

5.4 Continuing Legal Education Committee

Continuing Legal Education Committee is not specifically provided for under any law. It has been established through section 17 of the Tanganyika Law Society Act.⁷² The said section empowers the Governing Council to appoint committees consisting of members of the Society.⁷³ Continuing Legal Education Committee is one of the Committees which have been established under the said section. The Committee has the role of enhancing TLS members' competence by transferring to its member skills and knowledge on various areas of law.⁷⁴

68 Initial inspection involves inspection of the institution offering bachelor of law degree before accrediting the institution as a provider of legal education. Regular inspection is conducted after a grant of the accreditation and thereafter at least once in every five years to enable the Council to satisfy itself that the institutions maintains the initial standards that were approved.

69 Among the committees which may be considered include private legal practice Committee and the specialist Legal Education Committee. The private legal practice committee intends to ideally be charged with the task of reviewing rules relating to private legal practice, registration of law firms, registration of firms providing legal aid and legal assistance to indigent. This committee should also set periodic standards of quality of private practice in Tanzania. The specialist legal education Committee should be made responsible for identifying emerging/frontier areas of legal education and advise the government on the allocation of human and financial resources towards attainment of any such emerging theme of legal education. The committee should in addition organise or design appropriate continuing legal education befitting the new frontiers of legal education. The committee in that respect may cause to be prepared any postgraduate qualifications for inclusion in the list of approved specialist legal qualifications.

70 Juma I., *Op cit.*, fn 51, pp.20-22.

71 *Ibid.*, pp.20-22.

72 Cap. 307, R.E 2002.

73 Under section 17 of the Act, the Council has power to delegate to any committee all or any of the powers of the Council.

74 See the report of the Governing Council of the Tanganyika Law Society to the Half Annual General Meeting of the Tanganyika Law Society held in Arusha on 16th August, 2014, p.24.

The skills that are imparted to the members of the profession through the continuing legal education are necessary to keep the members competent for purposes of supplying the quality services to their clients. This task has been discharged by organising continuing legal education seminars.⁷⁵ It has been made compulsory for members to attend these seminars. The mechanism which has been put in place to ensure that advocates attend these seminars is by enacting the rules that require an advocate to obtain ten points annually from the seminars.⁷⁶ Each seminar is accredited two points although other seminars may be accredited more points depending on factors relating to the importance, duration and priority of the seminar. The question that comes up is the manner these seminars have been organised and their impact in improving the lawyers skills with the view of enabling them (lawyers) to offer quality services to their clients.

The continuing legal education seminars are organised and conducted as per the year calendar which is normally set in that respect. The calendar usually gives flexibilities for purposes of accommodating seminars which may not be contemplated or included in the calendar. The calendar contains date, place and region where the seminar is to be conducted. The past two years, experience shows that these seminars are conducted in cities and towns where there are a substantial number of advocates. Sometimes for purposes of avoiding financial loss on the part of the Society, advocates are to confirm their participation in the seminar by depositing the requisite fees for purposes of determining the availability of the required number of attendants.⁷⁷ With the establishment of Tanganyika Law Society Chapters, the organisation and management of the seminars is a task that is shared by the Tanganyika Law Society and its Chapters.⁷⁸

The challenge relating with the continuing legal education is that it has not been able to meet the expectations which are provided for in the law. The expectation requires members to continue acquiring legal knowledge and skills that are necessary for their profession and practice. Due to failure to finalise the curriculum for continuing legal education timely; seminars are now conducted in the manner that does not cater for the needs of speciality of the advocates. For example, in the year 2014, out of the total of 30 seminars which were conducted, there was only

⁷⁵ These seminars are organized by the Committee itself or, with the approval of the committee, by any other persons/ institution. Members can attend other relevant professional training provided by other institutions but they must write to the CLE Committee for accreditation. See Minutes of the Annual General Meeting of the Tanganyika Law Society held on February 22nd, 2014 at the Arusha International Conference Centre (AICC), Arusha, p.23-24.

⁷⁶ The members can also obtain the continuing legal education points through other processes such as participating in legal aid services supplied on the legal aid day, acting as a resource person in continuing legal education seminar and, in participating in other activity which has been accredited by the committee. That notwithstanding, there are some advocates who have, with genuine reasons, failed to attend these seminars or any other accredited activity. Therefore applications are normally made for the exemption. Due to the existing lacunae in the rules, each case is treated on its own merits. See Minutes of the Annual General Meeting of the Tanganyika Law Society held on February 22nd, 2014 at the Arusha International Conference Centre (AICC), Arusha, p.23-24.

⁷⁷ In the year 2015 alone four seminars were postponed for lack of enough number of attendants. There were other seminars which were postponed for various reasons such as lack of resource persons.

⁷⁸ At the level of the chapter, there also exists a committee called the Continuing Legal Education Committee.

one specific seminar on criminal law which was conducted in the whole country.⁷⁹ For purposes of obtaining the ten points required for purposes of renewing the practicing certificates, criminal law lawyers were forced to attend other seminars which did not relate to their areas of specialisation.⁸⁰

Associated with the above, the seminars are attended as the formality as opposed to the basic requirement of enhancing the advocates competence and skills for handling the consumers' issues. Some advocates simply register themselves on the attendance sheet and leave without attending the seminar. Others leave the seminar before it is closed. Therefore, the purpose of the seminars is outlawed and used as the means of obtaining the required number of points.⁸¹ Yet there is a large number of practising advocates who do not attend these seminars. For instance, in 2015 there were 563 advocates who failed to renew their practising certificates because they had failed to obtain ten points from the seminars in the year 2014.⁸² Again, up to March, 2016, the TLS was still inviting members who had failed to renew their practising certificates because of lack of enough points to attend remedial seminars.

As the result of failure to attend the continuing legal education seminars and failure to finalise a curriculum for the continuing legal education timely, advocates remain inadequately exposed to new legal skills which are necessary for offering quality legal services to their clients.

6.0 Conclusion

The laws regulating the legal profession in Tanzania Mainland do not provide for quality standards of legal services offered to consumers. Although the task of monitoring the quality of legal services is statutorily vested in various organs, i.e., Council of Legal Education and the Continuing Legal Education Committee; these institutions are bound to fail because of lack of statutory quality standards leave alone their inherent deficiencies which limit their ability of monitoring the quality of legal services.

It is important to note, however, that, lack of statutory quality standard has a serious impact on the consumers of legal services. Such impact may relate to loss of business and profit and; for matters involving litigation, over and above losing the case, a consumer may be condemned to pay costs.

7.0 Recommendations

Although processes of Constitutional Reform have already taken pace, it is reasonable to consider a right to legal services (which embodies a right to quality legal services) to be a constitutional right. Lessons may be learnt from the

⁷⁹ The seminar was conducted in Dodoma. It was titled "Criminal Law: Prosecution and Defending White Collar Crimes". See the Annual Report of the Governing Council to the 2015 Annual General Meeting of the Tanganyika Law Society, pp.27, 59 - 61.

⁸⁰ It is to be noted that continuing legal education points may also be acquired through participating in other activities which have been accredited by the Continuing Legal Education Committee.

⁸¹ For the seminars conducted during the Annual and Half Annual meeting registration is done by filling in the special form that is collected at the end of the seminar. This mechanism is designed to ensure that advocates attend the seminars.

⁸² See the summary of CLE points issued by the TLS in March, 2015.



Constitution of Kenya of 2010 where the said right is constituted under articles 48 and 50(2)(h). Further, processes of enacting the Council of Legal Education Act and; finalizing continuing legal education curriculum need to be expedited.

Taking into account the role played by different institutions and stakeholders in controlling the quality standards of legal services, there is a need for Faculties of Law, School of Law, Law School of Tanzania, Judiciary, Council for Legal Education and Continuing Legal Education Committee to establish a line of cooperation and information sharing for purposes of identifying challenges facing consumers of legal and designing appropriate intervention measures. Finally, TLS needs to have short and long term programmes of educating the consumers on their rights relating to quality legal services.