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Name of School / Jina la Shule: LST 40

Name of Scholar / Jina la Mwanafunzi: NYAGAWA, KELVIN

Subject / Somo : LEGAL RESEARCH & DRAFTING SKILLS

Class / Darasa:

Date / Tarehe:













Proudly Tanzanian

" Education Is Not A Way Of Escaping Poverty,
It Is A Way Of Fighting It."

- Mwalimu Julius K. Nyerere



07 15802278 - official

KELVIN EXZAUDI NKAGAWA,

Legal Research & Drafting skills | 20th - 24th January, 2025

| S 103

Nicodemus Nditi &
Seff Thomas
(Coordinators).

Moduli Code: LS 103 – LECTURE ONE

Moduli: Legal Research & Drafting skills { Mr. Ndiki / Semo / ~~Saif~~ Thomas.

Reason: It is advantage to start with this.
This is a now core Moduli but a basis of all Moduli
The foundation is laid here.
Is everything is practical, will require you to draft.
We are drafting documents.
Here is a foundation.
Be careful.
Make sure you attend all classes
follow up everything.
IMPORTANT THINGS:
"Every Examination, you will write Legal opinion, a well reasoned opinion

Today we have Mr. Mallya, Many will come to assist you

Focus on the following;
① – Skills in legal research
② Art of Legal Language
③ Drafting and Writing skills.
④ Legislative Drafting.

We will cover the above during the week.

Then we will have seminar (third week).
From today, your participation is important.
Do whatever directed.
In case of anything see Me (Seif) or Ndiki.

We need to have groups so as to go about it.
Especially seminars and everything.
The purpose is for group works and presentations.
So I am discussing with my collegeaus.

3 desks group.

Choose Leaders as well.
When we are done with groups then groups will die.
Groups start works effectively from today.

When you are done with Modules then it is over.
So make sure you do well and invest all your efforts.

Mr. MALLYA, LECTURE ONE.

LS 103

You all did dissertations.

Legal Research of two types:-
1. Academic Legal Research
2. Practical legal Research.

LL.B most of you wrote your research, that was Academic Research. you criticised the Law, gaps, efficacy e.t.c.

You also Made Analysis the Law: You tried to see how law implemented & How are they ineffective, you went to the field, & did Interviews.

Law school focuses on Pratical Legal Research. Here things are ~~different~~.

If involves making ~~Application~~ of the Law in making ~~Clients~~ Clients concerned. You will apply the Law, Precedents e.t.c in solving Clients concerns or Issues. You will be doing same literatures, same Law, same sources of law as you did in Academic research however, the Application is different. Now you take those Laws, cases and apply them in solving Clients' Issues.

You were taught sources of Law;
1. ~~For~~ Statutory Source of law.
2. Precedents / case laws
3. Customary / Islamic
4. Common law
5. International law.

Thereafter the last year, you wrote dissertation. You checked those sources of Law and you made critical analysis, to Law school you will put those into practice

The question is How are you going to do it.

1. How / What are the available sources
2. How are you going to make assessment of the Laws after checking the issues given by your client. They might not be all sources. You make analysis of facts given and know what source is useful.
3. How can you apply them
   Given the facts you have, the sources you choose then how are you going to apply.

Steps in doing practical Research.

- Here you will be facing practical questions / scenarios (99%)
- You are supposed to be guided.

STEPS

1. Analysing the problem
   Making analysis to the problem. Question, an issue or anything.
   Technically, you need to differentiate between the facts and the legal issues involved.
   You have a question to solve a question for Uhr. That Uhr requires you to exercise your skills in solving the question. Be speed, Be careful, Solve legal issues, not facts.
   After analysis / differentiating then you have LEGAL ISSUES

On the legal issues you have to check on if there is Law which provide for that issues.

E.g. Murder - Legal issue

Story behind someone killing - Facts

Action done by that person.

Then look at Murder in details

Analysis of Legal issues can make you decide. This can be analysed in the Law.

The aim is to see the Law & precedent so as to make application of it and draw CONCLUSION.

Check on the response that you are supposed to give, Am I supposed in quick or after some days. Do not go for sources which requires you analysis of four hours while the question requires 1 hr.

Sometimes asking another Advocate, is a way of obtaining details, It is another source of Law.

In examination don't copy other responses

(2) Step Create categories of the Legal issues you have.

Categorising the Legal issues available

How do you categorize?

Murder for instance

Can you categorize Murder?

① Attempted Murder

② Manslaughter

You are supposed to know the above, ask if there are categories. After categorizing, you will realize and be certain that is Murder or else.

Kisakisa will always ask if there is Liability.

Sometimes the legal issue might be in a form of ingredients.

In checking for categorize, we check for key words.

Key words will lead you to the specific source you are supposed to use.

You cannot search for Murder, while your categorize say it is Manslaughter.

Make sure you narrow down your facts. If you fail, you will end up searching everything. Eg Agency, contract, patternership.

Key words that are in the question that you have. It has to relate with the matter

(3) Check for Resources available

What are the available ~~Research~~ Resources?.

- Printed sources
  - (1) Text books plus Literatures, Journals e.t.c
  - (2) Online sources ← soft copies of our laws, cases, Online data base Tanzlii

(1) Online database will give ~~eff~~ alot of decisions We have also Judiciary Library (Only decisions) There may be other online sources.

All those requires subscriptions.

They provide published works

Encyclopedia also. If applicable.

My point is, you are supposed to know your available Resources. If you have them then know what are the resources you have so as you can choose

R.E, JUTA

Then after getting Resources know the following;

① Know how to read them

How are you reading a book of 100 pages, for one hour?

For statute same, know what are you looking for?

There are ways of reading any book. It might have 400pages and know that it is not useful.

② Make sure you are using the current version.

Our Laws are revised time to time.

Revision is what gives you the current status.

There are amendments.

Currently R.E 2022 (New)

POINT: Read current version

Looking for available sources, know how to use the available sources.

4th Step Make sure you know how to apply the Law and other statutes.

Ist students' problem: How to apply the sources to the scenario given.

Know how to give an what you know out.

Something to come out your head must come in.

Mast know how to make things get in but how to get out is a problem.

How do you apply what you have? Una mbinu gani ya kutoa vitu nje? How do you avoid to mix things?

In LSPA you have tools to use. How do you apply those tools?

Methods ~~the~~ za kuchota ni a problem

(5) Know the available time for doing Research.
Time that you know you have is a key, it very important, then divide that time accordingly. You cannot research for 5 minutes and answer a one page question for the rest 55 minutes. You will go wrong.
After responding to the question you will see that 5 minutes they are silent, 20 minutes they are writing and the rest of the time they are crossing questions.
So be careful, know how many minutes are you going to do research?

ADVICE; Make sure you do research first. Dont start to write first. You will be Lost.

Qn: Application for Revision
Give Legal opinion and prepare Chamber Application and Affidavit.

In Law school it is either you know or you do not know. It is either you pass or fail
Be straight with your answers.
Whatever

(6) Doing the Practical Research
The hardest part is to know the Subsidiary sources of Law. e.g that by-Laws of Municipal.
Other Laws are available.
Know whether you use Principal or subsidiary.

* In doing practical Research, you will be guided by number of questions:-
① Ask yourself, which part of this decided case is

applicable to my issue. I might not read the whole case but only part of it.

If statute then how is the provision applicable and that will take you to statutory Interpretation.

(ii) Writing summaries

Mr. Gudluck Chuwa and in case Prof. Mashamba will get time, they will tell you how to write summary.

You cannot read books without taking summary, the aim is you should not be able to consult the same book for the same matter.

Taking summary will depend on the key words. Do not write ~~summaries~~ in a book you can dispose. Just put it in a good book. You should not dispose it.

Point You will just read the summary books and go to ICA, no time to go back to the the cases, books or statute again.

(7) You are supposed to check if what you have gathered can solve the problem.

(i) What I have gathered?

(ii) Can it solves the problem?

Then how do you test if you have not responded to the question? (OP)

It is WPA, then you see someone is looking to the notice. That person is not aware of the problem, issues e.t.c.

You will have to come to the conclusion, What you have gathered, what is your decision. That's the best way of knowing if you have responded or not.

Go back to the facts plus sources plus Legal issue

then know if you have responded.

(8) Summarizing your findings and writing a Conclusion. It is applying your findings to solve the issue.

If it is a legal opinion, this is the time for you to draw your Legal opinion.

You have to be very specific.

Donot collect more than one thing.

Respond to what you have been asked.

Avoid assumptions, avoid "if" avoid "may".

If it is Murder, it should be ~~in~~murder.

"It is an attempted Murder because of ---- do not proceed --- But if he could have done this it could be Murder --- you will score Zero.

If you play with "If" then your Conclusion will be VAGUE and you will not get Marks. In Law school you have to be certain.

A VAGUE answer will get you Zero Marks.

Be Mentored by the Best student not by those who failed, Complainants ~~should not~~ be your Mentor.

Question, Instructions will be given to CR

Read the question, do it, You will not collect, but you will do presentation and presentation will be randomly.

① Question One

- Trespass
- Land ownership
- Strike out.

② - Problem was trespass

③ - The question was how did the Judge reached that decision.

④ Remedy
Refiling of the case.

Categories of Issues
① - Procedural Issues < Irregularity in the names of the party
② - Substantive < Ownership of the property.

Words used in the scenario
① Procedural < Suo moto Strike out
② Substantive < trespass possession

Resources to be used
① Civil Procedure Code
② Case Laws
③ Other Writings.

Issues discovered, KIMELA
- Land ownership
- Whether the Court was right to strike out the case

Masangula,

① Defective petition of appeal
Name
Was determined preliminary

② Words
Suo Moto, strike out, discrepancies & defective petition of Appeal

③ Remedy
To file the case again

---

① Analysis of fact / problem of the decision / Is it fatal
From the fact you get the Legal issue.
Striking out due to discrepancies of names - Court is the problem
Decision of the High

② Categories of the issues was it the best option?
① Discrepancies
Authorities
② Validity of the decision

③ Available key words
Should support the Legal issue.
They should be relevant.

④ Resources available
JALA (Criminal Appeals & Revisions originating from the Primary Court) Rules.

⑤ Way forward.
Is it an appeal or any other remedy

⑥ Time was to factor
It was to measure you.
Know the available time.

Practical Legal Research, the start determine the end.
Is it fatal or not fatal?
Be update & If wrong citation of names on Appellate Court is FATAL or NOT.

LECTURE 02 LS 103

LEGAL LANGUAGE

21/01/2025

Basically under this part we will be looking on the language that is used in the field of law.
Any professional has his language depending on where he works.
Law has the Language that identify the Lawyers
It is a Language that identifies Lawyers

Two typer of Legal Language
(1) Traditional Legal Language (Legalese)
(2) Plain Legal Language

(1) TRADITIONAL LEGAL LANGUAGE (LEGALESE)

What is it?

This is the historic Language that has been used by members of Legal profession. It is tradition because it has peculiarities which differentiate from other Languages that are used in other fields.

For examples;

(1) Use of Archaic words (old words) e.g thereby, wherefore, Thee, thy thereof, harbeas corpus, malafide, Bonafide, de jure, de facto, notwithstanding, Certiorari, Mandamus
(2) Use of Long and complex sentense.
(3) Use of unstructured sentenses
A structured sentence has principles e.g (1) Proper use of Capital & small Letters.

(2) Proper use of punctuation Mark e.g Coma, full stop
In normal Language you cannot start the word "and" after full stop or you cannot write Capital A in the word And.
Legalese has unstructured sentence.

(3) Preference of using passive voice, instead of active voice or words.
E.g Mlugaruga paid his rent to the Land Lord
The Land Lord was paid the Land rent by Mlugaruga.
Juma killed Hamis
Hamis was killed by Juma – Passive.
Focus on the subject, who did to who.

(4th) Active - The subject will do the action
In passive - The subject is acted upon

4th Feature
Frequent use of particular words / Repetition.
You might find the frequent use of word more than necessary. That is being used for to avoid ambiguity. You should try to avoid ambiguities.
E.g repetition of names in the Legal document to avoid ambiguity

5th Feature
Use of foreign words / Language
E.g French words, Latin phrases
PETER TIESMA } READ
MARK PAINTER }

There are complains about Legalese. Make sure you are good in using these Language

REASON AS TO WHY LEGALESE MAINTAINS THESE FEATURES

Read an Article by Peter Tiersma "Legal Language"
You will find a lot of features of Legal Language.

According to Tiersma,

① Every proffesion has its own Language. The same applies to Law, it is a Language that identifies a person. If every field has its own Language then the same applies to Law, this proffesion is NOBLE.

② With Legalese it creates respect to the profession and it improves writing and drafting skills of Lawyers.
If the Language was straight then no Lawyer would bother to Learn and have skills of writing & drafting.

③ Complexity of the Language is something subjective.
They are complained on individual cases. It depends on:-
① Education level
② Understanding Level
There is no general Rule

④ There is no proof that abandoning Legalese will make things easy for those who are not Lawyers.

⑤ Legalese is what creates demands for Lawyers.
No one will need an Advocate if he can understand the law.

⑥ Legalese is the Language of the Court
Documents that we file, submit e.t.c uses Legalese

⑦ The field of Law involves the use of Precedents and Cross-Referencing.
If I am in the field that uses the past to determine the present and I am supposed to use the past as it is then, I will not abandon the Legalese. Abandoning will create Chaos.

(2) PLAIN LANGUAGE

In 1960s there were a Movement that started in the United state looking for a change in Traditional Language. The Movement was not that fruitful They wanted to understand the Language used in contracts and other documents.

It was adopted in UK, South Africa, Switzerland & Australia.

South Africa enacted a Law to allow the plain Language to be used. They also wrote some Laws.

However, despite of those Movement, Only few areas were transformed. Most are remained as they are.

Read History of South Africa & Canada

FEATURES OF PLAIN LANGUAGE.

Read the book of Judge Mark Painter "The Legal writer". There are principles

① Avoidance of redundant words

Use few words.

② Use of Active words/voice instead of passive words.

③ Editing your work before releasing it.

Mark painter "Edit, Edit, Edit"

④ Consider the audience that you are addressing.

That means You have to use the Language which your audience will understand. E.g fellow Lawyers, uneducated Educated e.t.c

Make sure you communicate effectively and a person understand what you are communicating.

⑤ Choice of words

They are suggesting that you should use familiar words and not Archaic words. Words are many.

(6) Forming structured sentence.
(i) Proper use of punctuations marks.
(ii) Avoid complex formation of words like therefore, whereforp whereq

Use appropriate Language to appropriate audience

Qn. Strike a balance between Plain Language and Legalese. (Discuss)

In your Examination know which Language you are giving opinion to who? Give Legal opinion in the Language understandable to your client.

What makes a Language to be Legal is its features. But Language of the Court is the Language used or passed to be used before the Court. ie English & Kiswahili.

~~Consult the following~~

REASONS AGAINST LEGALESE

These are the reasons that promote plain Language.
(1) Legalese is an obstraction to the communication
Why? Because using legalese someone cannot communicate well to the audience unless you are communicate to Lawyers.
You cannot be communicating to peaon holding dictionary

(2) Promotes ambiguity
(3) Legalese forces interpretation to be sought from Lawyers. They believe that you can write in a way that you may not require a Lawyer to interprete.
(4) With Legalese, it creates classes
(5) Makes the Language of the Law to look old & out-fashioned

Qn. Do you think we are supposed to abandon our Language or not?

READINGS

① Mark Painter "Legal Writting 40th Rules of writing"
He is giving advice
② Peter Tiersma Article "The Nature of Legal Language"
11th Pages
③ Richard Wydick "Plain English for Lawyers" 2019
"Introduction only"

Question And do the following exercise
Go to Tanzlii, Judgement of your choize, written by Justices Katiti, Lutakangwa. After reading then identify the features of Legalese and give an Example for each feature.
Re-write that Judgement using plain Language.
I expect you to atleast use 15 Rules by Mark Painter.

Your work has to be handwritten. We are going to collect them all tomorrow.

Feature of Plain Language
Short sentences, short paragraphs but do not summarize

Assignment

GOODLUCK CHUMA Assignment RECAP

PLAIN LEGAL LANGUAGE FOR LAWYERS

Richard C. Wydick

&

Amy E. Sloan.

Legal writing style has four outstanding characteristics:-

① Wordy

② Unclear

③ Pompous

④ Dull

"said" "Aforesaid"

Characteristics of plain language.

① Eliminating unnecessary words,

② Choosing common, everyday words when possible

③ arranging words for clarity

④ preferring active voice.

⑤ Avoiding overly long sentences

&

⑥ Using easy-to-read design techniques.

How to write for Judges but not like Judges.

Some rules are not relevant to us so you apply it with modification

"Mbuohuu Alias Dominic Mnyaroge vs Republic, Penalty

Heading are signposts

Court of Appeal discouraged.

TANESCO vs DOWANS 90 pages

Mushi J

No other sub-headings.

When you are writing know your Audience. Do not write for yourself but for others.

If there are no sub-headings and headings.

If possible use sub-headings & Heading

Read, Mlyambina & Fandhi Twaib's decision

Know when to apply the rules.

Sentence should not be two longs.

Use of headings depend on the Length of the Judgement. Do not not use it.

We should not confuse foreign words and words that has foreign origin. Some are now very common and considered as English words.

CHALLENGE

The use of simple English
Use common words in stead of uncommon words.
Many student use legalese.
Read to know the difference.

FEEDBACK on the first part of the question
- We have understood the question very ~~words~~ well on features of legalese but we have failed to give Examples.
Writing

- Read alot on plain Language
E.g Wydick has alot of examples
Use of Improper punctuations e.g the use of "Comas"

→ The second part I preger not to talk about it.
Read again all 40 rules
"Read Painter and Wydick" - short
Brayan Garner "Plain English" - Long & complex.
Understand what each Rules
Start with Introduction in Wydick.

Judgement's readers is appellant & State ~~Attorney~~
Rule 1 "Consider your audience. Level of education, understanding etc
If you do not write a demand notice then you will not be entitled to costs.
In English there are level of English.
There are cases you're writting for "Multiple Audience"
Eg problems in drafting Legislation. We have done our best
Know your audience, The advice use plain Language
"In written submissions there is no harm to use Legalese because of your audience"

Rule 2 Front Load your document

Put first the important materials upfront.

~~Bail application, there~~

① You tell the Judge what you are going to tell him

② Tell them

③ You tell what you have told them.

The dispute should be in the first few lines. The reader must know the context first.

"This is the application for - - - we are going to tell you that our client has a prima facie case".

Rule 3 Frame the issues in fewer than 75 words

It means summarize your key ideas.

Short sentences and short paragraphs. "If you can not explain yourself in 1 page you cannot explain yourself in 100 pages".

Rule 4 Use the facts succinctly

Brevity, conciseness is what the same is all about.

Rule 5 Avoid overchronicling

Avoid the use of immaterial facts. Some facts are material and other immaterial.

Those details dates which are not important in your document do not include into your writing.

Rule 6 Heading are signposts they should inform.

It should tell what is inside. Read the Judgements of the House of the Lords

Eg The content of Arbitration Agreement

Decision of the Court.

Rule 7 Write short paragraphs

Rule No. 8. Form is important, it makes good looking

Eg Commercial Rules, submissions good format
Commercial Court uses Times New Roman

Why Times New Roman

"It started with the publishers of news paper, it looks good

Rule 9

Rule 10 Check your document carefully court page numbers
High Court (commercial Rules) say your document should not exceed ten pages, the rest will not be considered.
Especially where are rules on page limit. Need to comply with any formal requirement

Rule 11 Keep it short

Rule 12 Use no talking footnotes

American Law journals, three quarters of the page is footnote. If anything is important do not put in the footnotes. If possible avoid footnotes. ~~Used on~~ Use only for citation.

John Mapendo vs Govani, CAT

Footnotes are distinctive.

Rule 13. Use of high form of citation.

If you are writing for Court of Appeal comply with the Rules same to the High Court Commercial Division

Rule 14

Rule 15 Edit Edit Edit

① Hamis Mtima Athuman vs R, Criminal Appeal No. 57 of 2022, HC7 at Mtwara, Latiri Ka, J - Which rule by Judge Painter was breached and

what are the Legal effect of this rule.

② Maika Michael Vareli Kipoto vs Ephraim Tobias Kaziwani Land Appeal No. 49 of 2022 HCT at Sumbawanga, MRISHA J

① Hamis Mtinga Athumani versus The Republic Criminal Appeal No. 57 of 2022, HCT at Mtwara, Laltaika, J delivered On 5/6/2023

Breached Rule 15 - Edit Edit Edit contravene

the document was not perfectly edited see para 1 page 1 line 4

"prosecution's story that the appellant the offence of"

ground 6 not written properly

page 4 para 1 line 1 "averred the"? x

- Creates ambiguous, misleaf, vague

Page No. 2, Breached Rule No. 9

Form is important, it makes good looking.

Space used on the part of grounds of Appeal is different with the other parts of the Judgement.

Page 6 & 7, format of Etalized words is different with page No. 2 format

Effect: No good looking

Typological errors

Page 7 Errors in recording proceedings - Read the two cases

A perfect document has never been written

- 6 problematic Rule.

(xvi) 18 - 18 Rule

Short sentences, avoid surplus words, use fewer words

(xvii) Use mainly Active voice

Communication direct and shorter

(xviii) Use And and But to begin sentence

It is not wrong to start with And or But.

(xix) Distinguish between "that" & "which"

That is used restrictively and which is used non-restrictively.

Qualifying the known

means there are others you will use published and y those

Both are Correct depending on who want to convey

The Carriculum Rules that are published in the Gazette will be applied

not restrictively.

The carriculum Rules Which are published in the Gazette will be applied.

LECTURE 003

EMMANUELY KALLYA

LEGAL WRITING

22/01/2025

Writing is a combination of words, symbols e.t.c in order to formulate a meaningful words or sentence. The aim is to communicate.

Legal Writing

When you combine these alphabets in order to form words that are ~~you~~ used by persons in Legal field.

Are of three types:
1. Persuasive writing
2. Informative writing
3. Functional writing

PERSUASIVE WRITING

This is when a Lawyer write to convince someone or the court to perceive something your way / to buy your idea.

You have to write in a language that will persuade. You don't just write. You cannot just write. E.g Written submissions, Legal opinion

INFORMATIVE WRITING

This is when the Lawyer write for the purpose of informing others.

E.g Letter, Memorandg, Demand Notice

It should look as an information

FUNCTIONAL WRITING

This is the type of writing whereby a Lawyer is writing for the purpose of performing a certain function or to attain a certain thing

E.g Contracts, Wills e.t.c

The document to perform a certain ~~purp~~ purpose E.g Power of Attorney Board Resolution e.t.c

Which type of writing your client want you to do.

You should meet your client expectations.

How will you know the difference?

Skills of writing as Lawyer

Writing is an art.

Everything needs every efforts

You may have the same materials but different skills.

There are skills that you should possess:-

① Applying the thinking process

This has been explained by different authors. You should know the process of thinking:

Steps / Activities that you must perform

(i) Making analysis

Define the key terms in order to understand.

What does your client want?

What does your question want?

(ii) Planning

@ In chronological order, plan what are you going to do. Ask yourself, are their procedures that I am supposed to follow. Plan chronologically.

(b) Writing something straight is dangerous

(c) Time management

(iii) Look on the possible sorrounding circumstances that can solve your questions / case.

Any statute, any case, any precedents, any writing.

(iv) Understanding Emotions involved.

Some literatures are emotions.

@ If you are writing submissions then are there emotions you can show for the court to help you?

(b) It also involves looking on your opponent, how is your opponent perceive facts e.t.c

(c) Emotions sorrounding your client.

E.g client has been abused, he is in temper. Use skills.

(2) Using the writing process

We do not just write

The process involves the following activities:-

(i) Writing stage

If you are typing you are not focusing on grammar

(ii) Re-writing stage

It is adviced that you print the document and check number of errors which focus in the structure of your work (Macro-editing, Macro level of writing)

If the document is arranged chronologically.

(iii) Revision

You are supposed to edit your work by checking the issues like grammar, spelling, e.t.c. It is called Micro-level of editing

Helps you to write something which is free from errors.

(3) Brevity / Conciseness

This involves delivering a message that is straight. Be short but do not loose the meaning.

Brevity is attained by doing different things:-

(a) Use short sentences

(b) Use simple sentences

(c) Use active voice

(d) Avoid surplus / redundant words

(4) Use of action verbs

E.g Innocent was not innocent before the Court. - will require thinking

Innocent lied before the Court. - Proper

(5) Knowing your Audience

If you want to be a good writer, know the audience.

Are they;

Lawyer

Illiterate

literate

e.t.c

After knowing you will know proper choice of words.

(6) Avoid diversions

Make sure you are focused. Have time to read. Avoid using phones while studying. You mind should focus.

(7) Informative heading

Should be the same with content. You are supposed to inform through your heading.

"YANGA YAFUZU" → "KAMA AKIFANYA HIVI ATAFUZU"

Avoid ambiguous heading

(8) Structure your work

Essay, - Introduction, Main body, Conclusion

Structure your work so as your audience might understand it. Have a structure. That is why in legal opinion we have structure.

We used the above skills to draft Legal documents

TYPES OF DOCUMENTS;

(1) NON - CONTENTIOUS DOCUMENT

(2) CONTENTIOUS DOCUMENT

These documents are used by every personel of the field of

Law however it depend on the category of Lawyers. Categories are as follows;

(i) Judiciary
(ii) Lawyers from public service
(iii) Legal private practitioners

1. Affidavits
2. Demand Notice
3. WSD
4. Plaint
5. Application
6. Petition
7.

JUDICIARY	LAWYERS PUBLIC	ADVOCATE PRIVATE
✓ Judgement	✓ Charge	Legal opinion
✓ Ruling	Information	Agreement
Decree	✓ Affidavit	Plaint
Drawn Orders	✓ Applications	Statement of claims
✓ Summons	Submissions	Reply
Letters	Legal opinion	Applications
Notices	Agreement	Affidavit
Certificate of Delay	Power of Attorney	Chamber summons
~~Certificate on point of law~~	Notices of motion	Power of Attorney
Arrest Warrant	Notice of Appeal	Notices of motion
Orders	Petition	Notice of Appeal
	Final submissions	Memorandum of Appeal
		petition
		Wills
		Final submissions
		Plaint
		Demand Notice
		WSD

① NON-CONTENTIOUS DOCUMENTS

(i) Legal opinion
(ii) Power of Attorney
(iii) Agreement
(iv) Affidavits
(v) Demand Notices

LEGAL OPINIONS

A Law that provides for the Advocate to give opinion is G.N 118 of 2018 "Advocates (Professional Conduct & Etiquette), Regulations

According to the Regulations there are two types of opinions that Advocate can give.

(1) An opinion relating to non-Legal Matter

Regulation 24 of the G.N allow Advocate however, Advocate is required to give the client to give your expertize in that area.

(2) An opinion relating to Legal matter

Here is our focus

Is an Advocate duty bound to advize? Can't I refuse?
A private practitioner is not forced to advized, Regulation 15 However, the State Attorneys terms of service binds them to give opinion. They have their guidelines on how they write opinions. Despite the fact that private Advocate is not bound to advize but once you agree to advize, you are duty bound to the following-

(i) Duty to provide competent opinion

Regulation 16, accompanied with authorities or basis

(ii) Duty to be honest

Donot lie to a client. Be honest on the probable results on the facts he want you to advize. It

is not your duty to give Judgement.

(iii) Duty to research and understand the facts or the problem you want to solve
Regulation 17

(iv) Duty not to manipulate a client
Regulation 18
Young Lawyer take the work of the Court, You are going to win or Loose. If it is not on your authority to decide give probability.

(v) Duty to encourage the client to settle than litigating
Regulation 20 and 58
Encourage the use of Alternative Dispute Resolution

(vi) Duty to impartiality
Regulation 46(a) 48(3) and 108(2)
You cannot advice the parties if you have interest.
You cannot take part in court if you were a mediator
You cannot advice two parties who are in dispute at one time.

Witnessing the Agreement between Seller & Buyer does it contradicts impartiality?

(vii) Duty to obtain second opinion
Regulation 19
Do not be selfish

(viii) Duty not to assist or encourage illegal transaction
Regulation 21

Is an Advocate liable for his Legal opinion?

What is the option to the client who has been injured by my opinion?

- Sue for damages

CHRISTIAN KALINGA Vs PAUL NGWEBE, HCT at Iringa Misc. Land Application No. 26 of 2020

IMPORTANT THINGS TO CONSIDER IN WRITING LEGAL OPINION

1. An opinion must be written in paragraphs
   Paragraphs can be numbered
2. Must be written in a Language that the audience will understand
3. An opinion must have Chronological flow
4. Must contain Authorities or basis for what you are advising
   what is the Authority to support your basis / probable cause
5. Must be in an acceptable format

What is an acceptable format?

There are number of formats that are used in practice. No Universal accepted format except for the Laws that provides on how an opinion is supposed to be before the authority under that Law.

Eg The ~~Court of Appeal Rules~~ High Court (Commercial Division) Rules state opinion how it should

BRADEA Rules also states.

Regulation 17 of G.N No. 118 of 2018 Advocates (Professional Conduct & Etiquette) Regulations, provide Legal opinion to have the following;-

(1) Facts
(2) Probable Result / outcome
(3) Authorities for that probable result / outcome. Authority for your opinion

G.N 118 of 2018 govern all Advocates
Those Laws give the content and not the format.

The following are the common used formats from practice;

(1) Fact
(2) Issues
(3) Laws
(4) Application
(5) Conclusion

} FILAC

(1) Issues
(2) Rules / Laws
(3) Application
(4) Conclusion

} IRAC / ILAC

However, other common format involves the following;

(1) CRARC
Conclusion
Rule
Application
Rebuttal & Reputation
Conclusion

It has two conclusions, it is the most and best persuasive legal opinion. It starts with conclusion (what I think) and the last general conclusion

(2) IRARC
Issues - Rule - Application - Rebuttal & Reputation
Conclusion

Format may differ but Archawi is on raising Issues. If you raise wrong Issue you will end up with the wrong answers.

How do you raise an Issue?

Issue of two types

① Contentious Issues
Involved in Litigation

② Non-contentious Issues
NA related to litigation

Contentious Issues

On Matter before the Court, It attracts Criminal or Civil proceedings.

Non-Contentious Issues

This are raised when you give Legal opinion. Here a person does want just to know something. I have not fired someone but I come to ask for advize.

It is not necessary to start with "WHETHER". It may just be a question. It is simple

" Was there breach of contract?"

The problem is to write opinion on Non-Contentious Issues

E.g Can you register trust, transfer, retrechment.

You may still come with a question that is contentious?

① Can you legally retrech employee

② Can you registe trust.

In Legal opinion, raising an Issue is a road map to your answers. Without the question, you will mix up things.

~~Can the appellant~~

① Was the decision to strike out the appeal right?

For Law School of Tanzania, there is advised format that you are supposed to follow:

① Have headings
② Number the headings of your Legal opinion
E.g 1. Issues

FORMAT:

① Name of the client
② Date
③ Question (not an Issue) what are you supposed to advise about, Is it contract Matters, Land e.t.c
④ Brief facts / Summary of the Instructions (given by client)
⑤ Issues < Contentions / Non
Raise relevant Issues which will guide you to respond the question
bWhat does your client want
⑥ Laws Applicable < Facts - mention provision / Rules / Precedents - Mention the case
⑦ Discussion of Issues (Application)
Relate facts, and the Law plus Issues
⑧ Conclusion and Recommendations
⑨ Disclaimer
bWaiving you from the Liability from the third party who will suffer from the/or your opinion.
⑩ Names, date, & signature of the person who gave the opinion.

LAW OF AFFIDAVITS

Affidavit is a document that contains statement regarding what that the maker believes to be true according to his/her knowledge

IMPORTANT THINGS THAT MUST BE IN AN AFFIDAVIT

① Jurat ~~of attestation~~

Signed and delivered by _____ who is known/has been identified to me by _____ the latter being known to Me personally in my presence this ___ day of _____ 2025

② Verification

Not all affidavit have verification clause

③ Attestation clause

④ Signature of Deponent

⑤ Signature of Advocate

On verification the declarant should differentiate what is his knowledge and what is not.

What he has been informed? He should verify separately.

Failure; renders an affidavit to be ~~an~~ defective

TYPES OF AFFIDAVITS

① Affidavit for specific purposes

These are those affidavit prepared for a specific objective provided under the Law.

- Names
- Birth
- Substitution of evidence
- To prove discoveries
- Of witnesses
- Of signatures

② Affidavit supporting matters that are being Litigated
Are prepared to suppat something that is in dispute.
① Supporting Application
These once are contentious.
We need to know how We are to prepare different types of affidavit.
You should know when you are attesting as;-
(i) Commissioner for Oath
(ii) Advocate
(iii) Notary public

LAWS GOVERNING AFFIDAVITS

① Section 62 of Tanzania Evidence Act
(ii) Order XIX (3) of the Civil Procedure Code
(iii) Notaries Public & Commissioner for Oath Cap. 12 RE 2019
(For other purposes other than the court)
(iv) Oaths and Statutory Declaration Act, Cap. 34
(Used on administration of oaths and declarations or affirmation in Judicial proceedings)
└Before Court

Read on cases on the Affidavits.
DPP Vs FAROUK MSHENGA
SALIMA ABDALAL Vs REGISTRAR OF COOPERATIVE SOCIETY & OTHERS
REGISTERED TRUSTEES OF JOY.

VIP ENGINEERING & MARKETING LIMITED Vs SGC SOCIETY
① What can make affidavit defective?
(ii) What court action for defective affidavit?
(iii) What are the available remedies for a defective affidavit
Question If you can amend? Under what circumstances you can amend.

POWER OF ATTORNEY

A document that transpers mandate to a person to do something on behalf of another. Power of Attorney creates Agency Relationship

TYPES

① General Power of Attorney
For general matters

② Specific / special Power of Attorney
for specific task or instruction

Laws to read

(i) Registration of documents Act, Cap. No
Power of Attorney are registered

(ii) Land Registration Act
Section 96 (How can you revoke the Power of Attorney)

(iii) Civil Procedure Code, Cap. 33
Order III

(iv) Law of Contract Act, Cap. 345 R.E 2019
Read Part X of the Act
Revocation 159 and 160.

Read the whole agency Law.

WHY POWER OF ATTORNEY

- Making specified document
(i) Representation in Court
If he can not reach the Court, out of the country can give power of Attorney

Under what circumstance or when you can give Power of Attorney?
Georgia Selestine Mtikila vs Registered Trustees of Dar es Salaam Muslim School & Tanganyika Institute of International school
- "One must be outside the country" Court of Appeal

Bi mkubwa Issa Ally vs Sultan Muhamed Zahran

Hasan Mafole Magole & Another vs Juma Marale & 4 others

(ii) Acting on behalf of someone on other matters apart from Court.

- Purchase or sale of Land etc

Someone who is sick or not available for any other reason may give the power

REASON FOR REVOCATION

Section 96 of Land Registration Act

(1) Death of Donor or Donee

"IMELI MALEVA & ANOTHER vs DIMA MHORONGO

(2) Bankrupt

(3) Incapacity / Disability of both Donor & Donee

(4) Express revocation or renounciation

By Donor or Donee

For it to be valid, the REVOCATION MUST REACH TO THE OTHER PART

S. ZAHIR ROSHANARI HIRANI vs REGISTRAR OF TITLES

Other principles of Agency Applies

BARRETO HAULIERS vs MAHOMOUD BUALLY

Civil Appeal No. 07 of 2008, CAT decision

"Assignment to your CR, to be written properly and submitted before session starts to be collected tomorrow!".

Legal research
Process
Legal language

23/01/2025

LECTURE 004 Dr. Godfrey Taisamo

DRAFTING OF CONTENTIOUS LITIGATION DOCUMENT

Background,

Lawyering is a process so if you are a lawyer and you are serving as Private or office of solicitor General or Attorney General. You will be dealing with drafting

Non-contentious document

1. Official correspondences
2. Contracts

If research and the first answer is to go to court then you will be dealing with contentious matter.

The primary purpose of drafting contentious document is action. i.e Instituting a Court action.

If you are dealing with civil case you will be required to know how to draft Plaint, Petition, Statement of claim, Bankrupt Proceedings.

The process of drafting contentious document has its stages for any serious Lawyer as follows:-

STAGE 1

To grasp the facts, to understand the facts.
"From the narrated facts, you should come up with doable case."

STAGE 2

Preparation of the first draft of the document
"Prepare and share to get second eye!"
Look at this Plaint, Look at this charge,
Same to Judge & Magistrate. edit Edit the Judgment

STAGE 3

Re-writing (Macro and developmental Edit).

STAGE 4

Revising

This is Micro or copy-edit.

It is all about cross-checking -re-editing

Rational of having the stages is to avoid technicalities of procedure when the document is challenged for want of adherence to the required standard. That the document lacks required standard. You have your case struck out because of failure to Edit, Edit, Edit. It is embarasing.

The embarasing justifies the process of drafting. Atleast minor errors. Avoid major errors.



Chamber summons - Name of ~~the~~ who sworn plw in the affidavit should be the same.

If different it means Chamber summons has no affidavit.

The application will be expunged from record.

Qn 2

Use polite Language in your document. Use proper Language.

"Submissions were expunged from the record"

Contentious Documents

Involved in Court proceedings.

May be classified depending on Area of Law or type of proceedings.

We hope for Civil & Criminal Law.

You will draft Information e.t.c Charge as well

Documents in civil matters;

(1) Pleadings, Order VI of the CPC
(2) Applications (Chamber summons, Notice of Motion & Affidavit)
(3) Memorandum and Petition of Appeal
(4) Written submissions

SCENARIOS

"A year before her retirement from public service and through a written contract, Mwajay Kamdomo engage Mijengo Company Limited to construct a Residential House at Bunju Area within Dar es Salaam Region for the agreed ~~from~~ construction costs of Tshs 600,000,000/=. The entire contractual sum was paid on the date of the signing of the contract which was 16.01.2022 It was agreed that construction be completed within a year from the date of signing of the contract. Construction has not been done to date and Mwajay has been forced to rent a house at a monthly rent of Tshs 400,000/= from the date she was supposed to take possession of the House. Mwajay has approached you for your assistance.

The scenario is controlled by CPC, the document is Plaint the Court is High Court.

IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM SUB-REGISTRY)
AT DAR ES SALAAM

CIVIL CASE NO.___ OF 2025

MWAJAY KAMDOMO _____ PLAINTIFF

VERSUS

MIJENGO COMPANY LIMITED ----- DEFENDANT

PLAINT

The plaintiff above-named states as follows;

1. That, the Plaintiff is an adult natural person living/resident of ~~working for gain~~ within Dar es Salaam region whose address of service for the purpose of this suit shall be in the care of;

NYAGAWA LAW OFFICE,
P. O. Box 5099,
1st Floor, IT Plaza,
Opposite Air Tanzania
Phone; +255 629 700 431
Email: nyagawakelvin54@gmail.com.

2. That, the defendant is a limited liability company registered under the Companies Act, Cap 212 R.E 2002 Laws of Tanzania whose address of service for the purpose of this case shall be communicated to the Court process server in due course.

should say there is breach of order VII of CPC cause of action

3. That, the Plaintiff's suit against the defendant arises from the failure of defendant to construct a Plaintiff's residential house as per the terms of the contract entered on 16th day of January, 2022.

state to give details

4. That, on 16th day of January, 2022 the Plaintiff entered into a engaged the Defendant

written Contract with the Defendant for construction of a Residential House at Bunju Area within Kinondoni Municipality Dar es salaam Region. Photocopy of the Agreement attached with the leave of the Court sought for it to form part of this suit.

5. That, the agreed amount as per the term of the contract was Tshs. 600,000,000 which the Plaintiff paid forthwith the signing of the contract. Photocopy of the proof of payment attached as Annex 1. with the leave of the Court sought for it to form part of this suit.

6. N/A

7. N/A

8. N/A

Last numbered paragraph

9. That, for the purpose of this case has in terms of the value involved which is Tshs. 600,000,000 and that the cause of action arose within Dar es salaam, the Honourable Court has jurisdiction.

WHEREFORE, the Plaintiff prays for Judgement and Decree against the defendant as follows:-

(a) An order declaring that the Defendant breached the contract dated 16.01.2022.

(b) An order directing the Defendant to pay Tshs. 600,000,000 being contractual sum paid to the Defendant by the Plaintiff.

(c) An order for payment of monthly interest of 20% of the contractual sum (600,000,000/=) from the 16.01.2022 until full payment.

(d) An order for payment of Tshs 400,000 per month being rental charges from 15.01.2023 to the date of full payment of the contractual sum (b) above.

(e) An order for payment of 20% monthly interest on (d) above from 15.01.2023 to the date of full payment.

Debts - Don't Quantify other Quantify. Not failed to Quantify.

(f) An order for payment of General damages to the tune of Tshs. 100,000,000/= 10,000,000

Punitive damages depend on the case

(g) An order for payment of interest of 7% per annum on the decretal sum from the date of the Decree until full payment.

✓ (h) Costs be provided for.

(i) Any other reliefs as the Court deems fit in the circumstances of the case.

Plaintiff and Advocate should sign

DATED at Dar es Salaam this ____ day of ____ 2025

shall be signed by Plaintiff and Advocate (if any)

PLAINTIFF ADVOCATE FOR THE PLAINTIFF

verify each number of paragraph

VERIFICATION

I, Mwajay Kamdamo do hereby verify that what is stated from paragraph 1, 2, 3, 4, 5, 6, 7 and 8 is true according to my own knowledge while paragraph 9 is based on information obtained from my Advocate all of which I verily believe to be true.

Verified at Dar es Salaam this ____ day of ____ 2025

PLAINTIFF

Presented for filing this ____ day of ____ 2025

REGISTRY OFFICER

DRAWN AND FILED BY:
Kelvin Nyagawa, Advocate,
NYAGAWA LAW OFFICE,
IT Plaza, 1st Flour room No.36
P.O. BOX 5099
Phone: +255 629 700 431
Email: nyagawakelvin89@gmail.com

TO BE SERVED UPON;
MIJENGO COMPANY LIMITED
(DEFENDANT)
DAR ES SALAAM

HOW TO ANNEX DOCUMENTS

Copy of the said Contract is appended/attached hereto and marked as ANNEXTURE "KEN-1" and leave of the Court is sought so that to form part of the Plaint.

Copy of the said Receipt - - - - -

In affidavit the Language is different

Now you are set to prepare the Written Statement of Defence
Let assume the Defendant does not deny that they entered into the contract.

But he deny completion date

Written Statement of Defence

IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM SUB-REGISTRY)
AT DAR ES SALAAM
CIVIL CASE NO ____ 2025

MWAJAY KAMDOMO _ _ _ _ _ PLAINTIFF
VERSUS
MIJENGO COMPANY LIMITED - - - - DEFENDANT

WRITTEN STATEMENT OF DEFENCE

The Defendant above-named states as follows;
1. That, the contents of paragraph 1 of the Plaint are noted.

You may combine para 1 & 2

2. That, the contents of paragraph 2 of the Plaint are noted, save that the address of service of the Defendant for the purpose of this suit shall be in the care of;

B & K LAW OFFICE,
CHAMA 21 BUILDING,
1st Floor Room 132,
P.O. BOX 9909,
DAR ES SALAAM
Phone: 0680418866
Email: nyagawaroadforce ltd@gmail.

3. That, the contents of paragraphs 3 of the Plaint are strongly disputed and the Plaintiff is put into strict proof of the fact thereof.

4. N/A
5. N/A
6. N/A
7. N/A
8. N/A
9. That, the Defendant does not dispute the Court's jurisdiction.

WHEREFORE the Defendant prays for dismissal of the case in its entirety with costs.

Dated at Dar es salaam this ___ day of ___ 2025

XYZ
Principal Officer of the Defendant
duly authorized and able to
depose to the facts of the case

DEFENDANT'S COUNSEL

I will share with you Plaint and WRD template.

VERIFICATION

I, XYZ being the Principal Officer of the Defendant duly authorised do hereby verify that what is stated under paragraph 1, 2, 3, 4, 5, 6, 7, 8, and 9 are true to the best of my own knowledge

Verified at Dar es salaam this ___ day of ___ 2025

XYZ

Principal officer duly Authorized

Presented for filing this ___ day of ___ 2025

Registry officer

DRAWN & FILED BY:

XYZ

_

_

_

TO BE SERVED UPON:

NYAGAWA LAW OFFICE

_ _ _ _

_ _ _ _

_ _____

Final Submissions and different from Judgement Read CPC, CPA e.t.c Read Judgement

DECREE

IN THE HIGH COURT OF TANZANIA

(DAR ES SALAAM SUB-REGISTRY)

AT DAR ES SALAAM

CIVIL CASE NO. ___ 2025

MWAJAY KAMDOMO _____ PLAINTIFF

VERSUS

MJENGO COMPANY LTD _____ DEFENDANT

DECREE

The Plaintiff prays for Judgement and Decree as follows;

COPY RELIEFS FROM THE PLAINT

THE COURT ORDERS AS FOLLOWS;

(a) The Defendant to pay Tshs. 600,000,000/= to the Plaintiff being contractual sum.

(b) The Defendant to pay 5% interest per month on (a) above from 16.01.2022 to the date of full payment.

(c) The Defendant to pay Tshs. 400,000 per month as rent from 15.01.2023 to the date of full payment.

(d) The Defendant to pay 5% interest on the (c) above from 15.01.2023 to the date of full payment.

(e) The Defendant to pay Tshs. 10,000,000 as General Damages

(f) The Defendant to pay 7% interest on the Decretal amount per annum.

(g) The Defendant to pay costs of the suit.

ISSUED UNDER MY HAND AND SEAL OF THE COURT this ___ day of ___ 2025

_____

Hon. E.E. Mkwizu J

Extracted on this ___ day of ___ 2025

Collected this ___ day of ___ 2025

_____

DEPUTY REGISTRAR

CONTENTIOUS DOCUMENTS IN CRIMINAL MATTERS

SCENARIO

On 10th April 2022

"Juma Vigimbi is a watchman at the premises of Kidawa Marinda located at Sinza Kumekucha, Ubungo Municipal Dar es salaam. On 10th January 2025 at around/at midnight (00:30pm) Kidawa returned home extremely drunk She could not even proceed to her room or close the door. She undressed herself and slept in the sitting room. Juma took advantage of kidawa's condition and ~~saved~~ served himself with no resistance from kidawa.

Prepare the following documents/Necessary document

CHARGE

IN THE COURT OF RESIDENT MAGISTRATE
COURT OF DAR ES SALAAM
AT KISUTU
CRIMINAL CASE NO ... 2025

Assignment
How do you Protect the identity of a person

Center

REPUBLIC

VERSUS

JUMA VIGIMBI

Put the charging section and Punishment Section.

CHARGE

STATEMENT OF THE OFFENCE

RAPE c/s section 130 & 131 of the Capital Penal Code, CAP 16 R.E 2022

Who when where what

PARTICULARS OF THE OFFENCE

...

Dated at Dar es Salaam this ... day of ... 2025

Principal State Attorney

Do not repeat what is stated in the facts.

DRAFTING OF INFORMATION

For cases triable by the High Court.

Jurisdiction High Court

We are done with Preliminary Enquiry

We are done with commital Proceedig

We want to draft Information to intitute the case.

Section 26 of the CPA

To be Signed by Director of Public Prosecution.

IN THE HIGH COURT OF TANZANIA

(DAR ES SALAAM SUB-REGISTRY)

AT DAR ES SALAAM

CRIMINAL SESSION NO. ___ 2025

REPUBLIC

VERSUS

JUMA VIGIMBI

The _____ day of _____ 2025 At the session held to be at _____ the _____ day _____ 2025 the Court is informed by the Director of Public Prosecution on behalf of the United Republic that JUMA VIGIMBI is charged with the following offence.

STATEMENT OF THE OFFENCE

MURDER C/s Section 196 & 197 of THE PENAL CODE CAP 16 R.E 2022.

PARTICULARS OF THE OFFENCE

Juma Vigimbi on 10th day of January, 2025 at 09:30pm while at Sinza Kumekucha Ubungo Municipality within Dar es Salaam Region did cause the death of one MATHNDA KIDAWA with Malice aforethoughts while knowing it is an offence.

Instructor: RTRD from the office CHIEF PARLIAMENTARY DRAFTSMAN
RICHARD MBARUKU

LECTURE 005

LEGISLATIVE DRAFTING

Previously the office of CPD was under the office of A.G, Standing Order - What the government businesses duties should be done
Legislative process, process undertaken to prepare laws of the county. It starts after receiving instructions from the government. Every Act or Bill start somewhere. The one who finished it is the CPD.
It has the policies,

PROCESS (1) Policy prepared by the ministry, that document should be passed by the Parliament.
(2) Then, it is taken to prepare Cabinet ~~Concept~~ paper
Inter Ministrial Technical Commitee (IMTC)
Chief Secretary is the one who chair the meeting of IMTC to discuss the tabled matter from the Ministry. After the approval then the sent the Concept paper to the cabinet.

Policy - Cabinet Paper - Concept paper.

Chief Parliamentary Draftsman cannot prepare any document without instructions. It may be under instructions in collaboration with the Ministry. After receiving a concept paper he prepares a BILL and sent to the parliament for discussion. The process of sending the BILL will be discussed later on.

"The process of drafting legislation begins with the receipt of drafting instructions and ends with the completion of an agreed draft. But the drafting process needs to be seen in a wider context of it is to be fully understood. It is just one part of the legislative process which begins when an idea or concept concerning the social framework of society become ~~gut~~ policy, is transformed into Legislative Policy, is transformed into legislative shape by means of the drafting process, and eventually passess through the Legislative machinery to reach.

↑ Decision to prepare ↑ decision to prepare laws

Process in the parliament start when it is published in the Gov Gazette

— Is not a physical book, it is a concept

the Statute book as Law. It may even be argued that the Legislative process extends to enforcement of Legislation and its judicial application" [Thorton, 5th Edition edn, At p. 141]
└ Leading Authority in the Common Wealth
He was Chief Parliamentary Drafter in 1960s in Tanzania

FIVE STAGES OF LEGISLATIVE DRAFTING

1. Understanding
2. Analysis
3. Design
4. Composition
5. Scrutiny

National Assembly: Without the President
Parliament: With the president.

Book to Read: Statutory Interpretation Book, 2008 Edition Francis Bennion

When we are making Laws, we consider that people are different

PROCESS OF LEGISLATIVE DRAFTING

- Start Instruction
- Then Proceed with drafting.

What is the tool over the Legislative drafter.

① Conversant of the Constitution of Tanzania
&
② Interpretation of the Laws Act
③ Knows the Policy
④ Know other Laws to avoid overlapping with other Laws.

- Make sure you are asking questions to those who gave you Instruction.

- Understand the document which has been brought before you.

- You are required to design or make outline of the document you are going to draft.
- Compose the document
- Analyse the document
- After completin send to the office that gave you task then approved that it is ready.

Then send to the another committee of the Cabinet (CC) it goes to discuss that work of you. The work from the CPD. That Committee is the one to realise if the issue discussed to be inserted have been covered in the Bill, then it will order if not covered to be go covered. Our Bill are not printed anywhere than the GOVERNMENT PRINTERS.

Find Government Standing Order, it is very important.

After sending the Bill to the Govt printer and after printing it will return to the CPD and CPD will forward it to the Parliament, it will not be tabled in the parliament until 21 days lapse. This happens only, but Financa Bill not covered under 21 days.

Financa Bills prepared during government budget. It does not follow other procedures above. It is of its own procedures. It decls with taxes, fees for the purpose of Government Revenues.

Publish in the Gaz to notify the society for their views

After 21 days then you hear that Bill will be read for the first time from the date of printing. After reading it will be sent to STANDING COMMITTEE of the Parliament. Committee on Constitution, Agriculture estic.

OF THE PARLIAMENT

STANDING COMMITTEE are like soldiers of the Parliament. Few people discussing the Bill in thoroughly. They cannot proceed to discuss without a person or member from CPD's office.

As a drafter, you appear there for clarification. They ask a lot of question. Sometimes you may wish to withdraw the Bill.

As a drafter you must be smart to Lead the Minister.

Discussing with the committee it is where you see the reality of what you drafted. It is where the act is done. Because you see the comment of others.

It is where at this time we come with other document "SCHEDULE OF AMMENDENT". ~~for the second reading.~~

It is the document which covers the ammendments & agreed issues. The Bill is not touched.

Now the parliament makes the Laws.

Members of the Committee order the government to make Ammendment to the Schedule of the ammendments.

2nd Reading Then the Chair of the Committee share what has been discussed in the committee to the whole Parliament. This is called THE SECOND READING."

Note: Each Standing Committee should call stakeholders to discuss the Bill.

It is allowable to re-write if there might be foreseeable amendments

During the SECOND READING, it is where the ~~need~~ Law is really enacted. All members of the Parliament are there debating. The Minister (Central Minister) is given opportunity to explain what is contained in that Bill. Also the Standing committee present what has been discussed. Also the opposition party, Minister of opposite party do come with comments against.

Every member who think he has got anything to talk about the Act will be given an opportunity.

The Bill may be implemented on a single day (3hrs) but it depends.

PASSING THE BILL

The Parliament turns to be a committee of the Parliament to discuss provisions by provisions. This is where you will see the importance of the schedule of Ammendments.

Any provision which has been affected by schedule of Ammendments should be discussed.

Any comment if agreed will be agreed together.

Then if agreed then the **BILL PASSED**

But yet still it should be sent to the President to be ASSENTED.

If not agreed then they return. But must president delay to assent as no limitation to assent.

Then if ASSENTED, it become a Law and start to OPERATE but how to operate.

The procedures of making the enacted Law to work

We must be procedures to make a substantive issue to operate / to be enforced.

Here it is where we have Sub-sidiary Legislation which mainly are meant for procedure reasons, How the Act will be undertaken.

Whenever there is a need, the Minister may make Regulation that is why the Law uses " The minister may make Regulation.

Procedures are there to make the matters are run smoothly.

How are you making Regulations

It is a secretarial Minister who may prepare to make things move smoothly

They are not preparing indoors. They invite stakeholders for discussions and assistance.

This is where Lawyers (all) may be involved. Not necessarily a Draftsman.

"All Parliamentary Draftsman are Lawyers and not all Lawyers are Parliamentary Draftsman."

Even Regulations are not made indoors and the Parliamentary Draftsman should attend. The Regulation come from the already made/enacted Laws (Principal Act). If you want to create Regulation which is not in the Principal of the Law then you should ammend the Principal Act first.

All Regulations, Rules etc should be sent to the Chief Parliamentary Draftsman for VETTING, the Parliamentary Draftsman may ACCEPT or REJECT/RETURN.

Regulation should conform with the acts, it should not supersede the Act.

In Drafting observe the following;

COMPONENTS OF THE BILL

① Long Title
It explains the scope of the Act

② Preliminary provisions
Like a door contains Citation (Name of the Act), Application of the Act

③ Statement of object & Reason - In the Bill not in the Act

④ In the Bill provisions they are clauses but in the Act they are called SECTION.

Find the standard Bill and see the Differences.

⑤ Power Function etc (Administrative
Criminal (Penal Provisions)

DOMESTICATION OF TREATIES

International Instruments
Treaties
Conventions
Protocals
Declarations

For it to be a law here it should be domesticated.

AMMENDMENTS OF THE ACT

① Many start with the secretarial Minister who say the act has brought many problem, they prepare the amendment and sent to the Attorney General office.
Ammendments should be sent to the Committee of the cabinet. These do not follow the procedures. These are Minor ammendment not touching substantive.

Major Ammendments are to be discussed and prepare Cabinet paper.

Section 4 of The Law Revision Act gives mandate to the CPD to ammend and review the Law.

Revision should be done in Ten years. You compile the same is a single Document.

There you come with the Issues of Chapters.

During Revision it is the time of clarifying the Laws.

TOOLS OF REVISING THE LAW

(1) Index of Law

It shows all Laws and how they have been amended and when it come into force.

You are taking all ammendment done and condense in a single Act.

SUB-SIDIARY LEGISLATION

Regulations
Orders
By-Laws
Proclamations,

DOMESTICATION OF INTERNATIONAL TREATIES

It is a way of allowing what has been agreed. It entails the process of making it enforceable and effective in Tanzania.

Those passing the Treaties must be very carefull to know what is contained in the document. That is why we have the so called RESERVATION

PROCESSESS OF DOMESTICATION

① The office should prepare a document (Declaration) to be passed by the Parliament.

After discussion, the Parliament will instruct the CPD to prepare a declaration on what is it all about.

You should take a copy of the Treaty to the Parliament for Certification.

Parliament discuss/debate, It should be sent to the Committee and the committee will send to the President and the Treaty will be PASSED.

Sometimes, they reject.

Other countries like Nertherland, they do not that procedure "Ratification of the country" No blockage, they take as it is.

Treaties are dropted Internationally, Institution or Board prepares the same —x—.

In dropting you must be ready for anything. Commitment.

Act is passed, after sometimes goes to Revision, to Chapter, e.g Arbitration Act
Consequential provision has been ammended
what does that mean for you as a draftsman.

Private Member Bill.
Public Member Notes.

On Subsidiary Legislation
Interpretation of Laws Act Cap. 1
Part VII
Section

How to make Local Govt Subsidiary Legislation
The Local Govt (Urban Authorities) Act
The Local Govt (District Authorities) Act
The Local Govt Finance Act
Inte

IMTC & Cabinet Committee

Interplay between the two
IMTC is not a committee of the Cabinet
Chaired by Chief Secretary
Comes in before the Cabinet paper has been submitted to the Cabinet.

Cabinet Secretariate will scrutinize the cabinet paper.

Cabinet Paper has a format

After clearence it will be taken to IMTC.
Ministry deals with Polizies, the do not do.

Read section 11 & 12 of The Attorney General (Discharge of Duties) Act

Do not confuse IMTC - Secretaries
&
ICB - Cabinet members..

Procedures for Domestication.
Four different ways
① Formula
② Wording
③ Subordination
④ Hybrid

FORMULA METHOD.
Simply take the convention then you draft a Bill "An act to give effect to the ---- Singapore Convention"

The provision of ---- as they appear are applicable in Tanzania

WORDING
You reproduce the convention as it is, you simply call it an Act.

SUBBODINATION
Subordinate Legislation
In the ~~simple~~ Main Act you aff the subordinate Legislation

HYBRID

Some provision of the convention are reproduced or with slight changes. Or some are changed to Subsidiary Legislation. More than two or three.

Do not confuse between Standing orders of the National Assembly & Standing Orders of the Public Service.

"Read Utaratibu wa kutunga sheria" & "Utaratibu wa kutunga Sheria za Bunge."

On Law Revision, make sure you have Cap. 4, The Law Revision Act

Your work for the weekend
"The Judgement you wrote, Re-write it again"
"Do not use ChatGpt"
Use 40th Mark Painter Rules of Writting.

12 E - CAP by Hon. Mwaikenja - PRM

SEMINARS - Hon. Mwaikenja - PRM

03rd February, 2025

1. Legal Research meaning
   Application of the Law in handling client's matter.

2 Academic Legal Research - Studies
  Practical Legal Research - to solve client's Problem
  Legal matter on the field.

3. In practical you aim to solve the client's to solve the client's problem.
  In Academic - No client
  In Practical - Client is there
  Know the nature of the client
  Choose plain or Legalese depending on the nature of your client.
  Look on your audience first.

We are writing Legal opinion to switch the client's interest
Language matter < Legalese / plain

Know the nature of the client

1st Law Read→

4. Laws governing preparation of Legal opinion Regulations
   4.1 Advocate (Professional ~~Ethics~~ Conduct & Etiquette) G.N 118 of
   Regulations 15, 16, 17, 18, 19, 21, 46, 56 & 58 of the Law, cuts across Advocates

   4.2 The High Court (commercial Division) Rules, Applicable in the High Court of Tanzania (commercial division). With exclusion of all other Courts e.g Subordinate Court etc.

4.3 Basic Rights and Duties Enforcement Act (BRADEA Act)

On the question relating with the application for Review or Prerogative orders.

4.4 Whether Constitution should be cited as a law governing legal opinion.

4.5 Precedents

Paul Ngwembe

How the Legal opinion should look like

- Format
- Written in numbered paragraphs
- Language known.

4.6 The Office of Attorney General (Discharge of Duties) Act, Cap. 2

Pertaining to those working in the Ministry of the government, solicitors general e.t.c.

To give opinion on this matter, matter relating to those who are employed as Lawyers of the government.

There is a format there.

5.0 Task 1

Steps in transfer of shares

Steps in change of shares

Partnership

1. 1st Format } Things to consider
2nd Content }

2. There is no any uniformity or single style of writing legal opinion. It depends on the place. That does not

mean it has no format.
No mathematical exercises, it depends.
Even Judicial officers do write Legal opinion.
Eg on amendment of the Rules

Legal opinion

1. Facts of the case

Go through the facts and Summarize the facts do not reproduce the facts.
Facts should be Concise and short.
Law school do not need a lot of things, be brief.
Write on your own language.

2. Issues

In Issues, there is Order XIV Rule 1 of CPC. We get Issues if there is allegations and denials. Plaint & WSD and see what is the Legal battle
Order XIV Rule 1(5) of the CPC

Here Issues in Legal opinion is what is your Client's need.

If you reframe Issues then you should answer them. It is a cornerstone of your Conclusion.

3. Laws Applicable

Case laws, Statutory, Regulations. It should correspond with the Legal Issues raised.
But not all Laws. Do not cite all Laws.
Connected to the matter concerned
- Companies Act, Put applicable Laws

4. Analysis / Discussions / Application of the Laws

How the Laws are applicable to the issues raised.

5. Conclusion

What is the position as far as each issue is concerned, the conclusion should concern with any issue concern. Conclude it without missing any, Say if it is possible or not. In view of the above -- the Law affords --- the procedures if not followed, there could be no transfer recognized by Law

6. Recommendation.

I hereby recommend you to do the following. Recommend but do not have write to much. Just write briefly not too much. Follow this, File Appeal, Institute a case etc. Here you recommend on what should be done.

7. Disclaimer

Is a just a statement that I am responsible to you not to others. It is to you with exclusion of all others.

It is only suitable to you not to others, I will be responsible to you or not.

Do not remove yourself from liability.

Title should be there. - Legal opinion in respect of

From: _ _ _ _ _ } should be there
To: _ _ _ _ _

Discussion Part, How do we go about?

Try to connect, know the fact and what your client need and position of the Law only that.

Here we look on the smartness of the students. Do not quote much. Like have the provisions and

state.

Mention the Laws and I will mark the Law.

Precedents is one of the Sources of law.

The test is to know how you grasp the Principles of the Law.

Questions:

(1) Transfer of shares, Advise the Companies what are the steps for transfer of shares
- There is a subject called Commercial Law, not yet.

TRANSFER PROCESSES;

(a) Determine the parties involved
~~(b)~~ Two types, share purchase agreement & Deed of Transfer

(b) Get the gut approval
~~Board Resolution~~ & special Meeting

(c) Prepare the transfer Deed / must sign the Instrument

(d) Submit the transfer Deed & Certificate

(e) Get the board's approval

(f) Update the Register / share register.

(g) Issue new share Certificate if the shares have been paid in fully.

(2) Formation Partnership;

(a) Choose partnership (Partners).
Appropriate Partners

(b) Choose the unique name of the firm

(c) Create a Partnership Deed
Terms & conditions

(d) Register with BRELA
Not much mandatory
(e) Visit TRA with the Deed
(f) Obtain a business Licence
(g) Comply with Regulations
(h) Determine Tax obligations

Make sure you know Partnership Deed Before even being taught Commercial Law.

1. Partnership can be created orally or by Deed.
Is an Agreement
Best practice ⇨ Deed.
2. Should comply with section 10 of the LCA
See Capacity and other things

CONTENTS OF THE PARTNERSHIP DEED

1. Name of the firm
2. Business operation
Where does it operate
3. Business Place
4. Business duration
When it commences and ends
5. Capital clause
Partners, How each contribute. E.g I can give House, Movies, Car etc
6. Division of task clause
(Duties and Responsibilities among the members).
7. Retirement (Death)
How will partnership come to an end
What will happen if one dies.

Deed of Partnership might be amended if there is challenge.

8. Expulsion / Suspension of members

9. Dispute Resolution clause

10. Signatures 11. Notary Public.

Individual items, go and perfect the Partnership Deed.
To be collected early Morning tomorrow.

Advocate. Glory Bene
04/01/2025

Task 1

(a) Advice on what should be done on the issue of renewing licence and her daughter's concerns.

Section 10 of The Oaths & Statutory Declaration Act [Cap. 34 R.E 2019]

Deed poll - due to purpose and duration
- Names Affidavit - temporary solution
- Deed poll - Permanent
- Also depend on the circumstances, If for instance Authority requires the document, give them a Deed poll.

We all know that we use three names.

(b) Propose the issue

Tshs. 60,000 is a Minimum wage, kima cha chini

Amri ya kima cha chini, Mshahara, 2022

Do not raise the issues unnecessarily

Make proper use of your time.

- Labour institution Act, Regulations, ELRA (Employment and Labour Relations Act)
- Criminal Procedure Act, Penal code Act

- Put full citation in full

The first opinion - People who understands
Second - For a person who do not understand

Depending on the facts, frame issues with "what" or "whether"
What mostly for non-contentious
Whether mostly for contentious

Civil and Criminal cannot go together.

Power of Attorney ~~of law~~ Cap. 117
Power of Attorney Cap. 334 Land Registration
— Land matters
— Not Land matters

Registration of documents } Different offices
Land Registration }

Immigration offices you cannot do anything there asking for passport if you do not have National Identification Card (NIDA).
Or
The letter from Mamlaka ya vitambulisho vya Taifa may also be required.

Part 2 – Drafting of Documents

Power of Attorney

It was Special Power of Attorney

It is Limited because of What tasks you are going to do.

Do not give General Power of Attorney.

After completion of task, Special Power of Attorney

S. 96 of 334 Land Registration Act – Revocation of Power of Attorney

We start with We, MUFUU LIMITED a company duly incorporated under the Laws of Tanzania Companies Act, Cap. 212 R.E 2002, with certificate of Incorporation ---- hereby appoint ---- to be our Attorney.

Attestation – Company SEAL

Two Directors &/or One Director & 1 secretary

Seal kept by Secretary

He should accept and sign DONOR & DONEE

Grantor & Grantee

Revocation

Revocation of Power of Attorney dated ----

Company not witnessed by the Advocate

SEALED with the common seal of the Company it is not witnessed by Advocate.

NOTE. Power of Attorney – Outside the country sign there and send the document to Tanzania. Make sure you see the person.

Sign in the presence of the person.

Deed Poll registration

Under Registration of document Act [Cap. 117 R.E 2002]

Make sure you attach documents

E.g Birth certificate

Passport

Academic Certificates e.t.c

Section 8 of the Law

After registration in the Ministry for Lands

Then send to the Government Gazette (Notice) for Registration.

- Every Friday they released.
- To inform people that is the purpose.

AFFIDAVIT OF CHARLIE UHURU

The Oaths and Statutory Declaration Act [Cap. 34 R.E 2019]

Write Religion

No verification is required. Just state the facts

Other paragraphs are for evidence.

In the durat

Donot write Sworn and delivered. → We do not deliver affidavits which are just from Court

Just write Sworn at Dar es Salaam → Not to Court

Do not confuse affidavit under O. XIX of CPC

The one who sign is DEPONENT

The one who witness is COMMISSIONER FOR OATHS

Christian - Sworn ; Adult Christian.
Other religion - Affirm Adult Muslim.

Make sure of you do not know the person
If you have signed and you do not know any person so please write a person who has introduced him/her to you.
Identify a person who introduced him/her to you.

Today's Recap

05th February, 2025

Demand of the question 3
To prepare the Application to lift the Corporate veil.
Position
- Is it possible to arrest a person who was not party to the case.
- Were we supposed to have the same Application or two applications?
- How do we go about?

Section 38, 68(e) and 95 of Civil Procedure Code [Cap. 33 R.E 2019]
- Non- citation of the provision is not fatal,
- JALA S.2(3) of JALA.

Prayers in the Chamber summons
1. To lift the cooporate veil
2. Costs
3. Any other reliefs this Court deems fit and just to grant.

- In the affidavit, you give particulars of Directors, and then Ruling will hold them liable and you will attach them or join them in the Application for Execution. They will come to show cause why the should not be arrested.

Question No. 1

To draft Plaint

Order VII of the Civil Procedure Code [Cap. 33 R.E 2019]

Cause of action

Breach of Agreement.

Breach of the Agreement: Failure to Honour 6.3 Million per month as agreed.

Name this way Court: The High court of the United Republic of Tanzania

Cause of action:

You may start or put it in the end.

Exhibits why seeking Leave?

Because it is not part of the Pleading it is another thing. Not allowed evidence, Order VI Rule 3 and 9 of the Civil Procedure Code [Cap. 33 R.E 2015].

To be proved differently 450 & 226 Millions.
50 Millions as general damages.
How did you reach that amount?

Question

Recap

Contentious documents, what are they?
Used in Litigation

Advocate KASSIM KIPANGA

Contentious proceedings in Criminal 06th February, 2025

Procedures

Advice Mwagrika Halisi if there are Criminal liability against the Directors.

TASK 1:

To prepare Legal opinion on Criminal liability of the Directors.

- Whether the acts amounts of to criminal offences
- What are the specific offences to be charged to the Liabilities.

Proceeds of Crime Act, to claim you Money but it is not a person under individual capacity.

TASK 2:

Put Titles in everything you are writing.

Prepare a ~~legal opinion~~ Charge based on the opinion in the task 1 above.

Conspiracy - Go and read this.

The concept of Incomplete offences.

The particulars should contain Five Wis

The Particulars must establish the ingredients of the offence.

SUBMISSIONS CATEGORY & CIRCUMSTANCE

RECAP

Ferdinand

- What is written submissions

It is a legal arguments in written format substitute of oral submission for or against the matter in dispute.

There should be an order of the Court.

It communicates the arguments of the parties

It can be orally or in written form.

Cases are argued through oral submissions

IN WRITTEN SUBMISSION we have two;

- Submissions in Chief
- Submissions in Reply
- Rejoinder (if any)

Another category of submission in substantive category -

— Final submissions - filed at once < your own Judgement.
— Closing arguments
— Here no summary of evidence.

FILAC

If no counter-affidavit, deal with matters of Law only.

Contents

① Name
② Case Number
③ Title / Rejoinder etc
④ Facts - Brief
⑤ Issues -

⑤ Arguments
⑥ Conclusion

We discourage the use of Legalese - Mark - Painter. At the point we write to communicate not to impress.

ISSUES TO CONSIDER / TIPS OF WRITTING SUBMISSIONS

- Should be in paragraphs whether numbered or not
- Supported by authorities, whether statutory or case Laws and of sometimes juristic Language.
- Use of Language

Use plain English, Ruling are subject to public consumption. The Language should be persuasive and that is the Advocacy. The Art of persuation. It is our Life. We win our case based on the art of persuation. Watch DRAMA SERIES, DR. HARVEY, LINCOLIN LAWYER, PRESUMED INNOCENCE

- Prayers

Submissions are not evidence, analyze the available evidence

- Consequence of failure to file submission; 1st school of thought to dismiss for want of prosecution and we consider the applicant failed.

RULING & JUDGEMENT

- RULING - in interlocuting proceedings, Revision & Reference specific substantive matter
- Interlocutory those which do not finalize the matter
- P.O Ruling if finalize the matter, it is appellable.

In Labour they write Judgement in Revision.

We are guided by Principles

A - Accuracy to the subject matter relevant to the case
B - Brevity, be brief
C - Clarity, be clear

Contents of Judgement & Ruling

1. Title Court
2. Case No.
3. Parties
4. Title
5. Facts
6. evidence (if any) / summary of ~~Ruling~~ the agument
7. Draw issues
8. Analysis
9. Decision with reason for decision

Ruling & Judgement give birth to:-

1. Decree
2. Order / Drawn Order

Overall Recap - Session

1. Jimson Mwankanja - PRM
2. Tasamo, Advocate
3. Method, Advocate
4. Lulu, Advocate

Questions:

- Who signs contentious documents in Court.
- WSD -

Plaint - Plaintiff & Advocate if any, after verification, Plaintiff

Affidavit -
- Your client Swear or affirm
- Deponent
- My client case is dismissed, then, Advocate signs as a Deponent. To state reasons
- Who owns that affidavit.

Things to consider during drafting RULING

① Name of the Court
② Magistrate / Presiding officer
③ Case Number
④ Parties
⑤ Title
⑥ Facts
⑦ Issues
⑧ Analysis
⑨ Decision
⑩ Reason for the decision

For ease of reference, read Ruling in the Tanzlii.

Which affidavits need verification?
- Contentious - Needs verification, made under cap. 12
- Non-contentious - Do not need verification Made under 34 of the Law.

Affidavit & Deed Poll
Affidavit of names - To confirm your names
Deed Poll - To add or remove your name

You should know where you are submitting the document, NSSF, ARDHI, BRELA, NIDA do not want Affidavit names but Deed Poll.
Kwapichwa they need that.

Is it possible to raise P.O in Written Submissions?
Raise a concern not a P.O in the written submissions.
On the date of appearance raise that concern. If not possible to raise P.O in submissions.

Ubungo District Court
at Kuguruni

The difference between Advice and Legal opinion:-
Orally — You must write.

① Question and Issues

Question: Key words only, take the boundary, without putting necessary questions

Issues: From the facts

Contentious - Whether
Non-contentious - What, which