LECTURE 001

LEGAL ETHICS & PROFESSIONAL PRACTICE
LS 102

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17th February, 2025

We meet in big class like this to share experience.
Before seminar sessions.
To see that we are on the same schedule

11 Sessions

Today three sessions.

We are supposed to end at 07:00 PM

from 02:30 PM - 04:30 PM - Task

It is Learning by doing.

You are to apply the knowledge of undergraduate.

What is Professional conduct and practice?

These are standard set by Law or professional group to be followed by that group. We have Advocates who are guided by the Laws in the conduct of their professional conduct.

Standard and rules which are set by a specific group to be complied by professionals with in their daily activities.

What are the key words

- Standard
- Rules
- Specific group
- To be complied
- In their dail activities
- Profession.

Purpose

① To govern the conducts
② To maintain the integrity of the proffession

Proffesional - It can be doctor, Lawyers

Each proffessional is governed by rules & standards to be complied with in their daily activities

OBJECTIVES.

Standard & Rules

They are required to follow the standard and Rules.

Soft Laws :- It is not mandatory.

Historical Development

Why proffessional conduct & Practice?

Initially, Each proffession was regulating itself because there was agreement of members of the proffessional and that proffession. (self-Regulation)

It was the duty of the proffession to protect itself.

Later on it was discovered that it is dangerous in the effect of breach or loss to the others.

It was matter of the Public, what conduct could cause to the public. The Public is the centre for the development.

Think of Engineer, E.g The Kariakoo incident, collapse of the building.

The one who designed was a proffessional. He D

required to be regulated.

Now, we have Statutes to regulate the proffessionals.

The Learning objectives are in your Carriculum

OBJECTIVES

① Utilize code of Ethics & conduct in ensuring credibility of those who are practicing Law and Legal practice

② To apply proper procedures and practice in applying the Law business in Tanzania

General Overview of proffessional Conduct & Practice in the context of Legal proffessional

The Focus

- The general Meaning and application of two terminologies:-
  ① PROFFESSIONS
  ② PROFFESSIONAL

Proffessions ⌜ A figure of expertise e.g Law
Proffessional - A person who is in a proffession

Possessing certain knowledge or skills; Proffessions
Those who belong to the profession are Proffessionals

Legal proffessions can be divided into three section in Tanzania:-

① Judiciary / The Bench ← Primary DC/PM, HC, Court of Appeal
② Public Bar ⌜ Law officer and state Attorney in the Public service
③ The Private Bar / Advocate in private practice or in a private sector.

PROFFESSIONAL PRACTICE

Proffessional Conduct: How should the proffessional conduct to the Public. How is a proffession is required to be in rendering the service or in ordinary way. People should see you as a Judge or as Advocate or Magistrate e.t.c.
How is a member is required to behave in rendering service or in ordinary Life.

E.g Will you contribute punishing a person who steal?

What will be the reaction of the Public?

What is Proffessional Practice?
If a member of a proffession act contrary to the conduct or standard commits PROFFESSIONAL MISCONDUCT. It happens when he goes against the regulations or requirement of the law or Rules or Regulations.

Proffessional practices refers to actions and conduct which a person in a specific proffession should demonstrate in the course of practicing his or her proffesion.

You must demonstrate a certain level in which an ordinary person can see you are an Advocate.

Proper/justifiable
It requires the appropriate application of the specific Knowledge, Skills, experience, Expertise and ethics to real practical situation.

It is specific because for instance, Medical Doctor has and other ordinary man do not have, same to Lawyers.

E.g One is suffering from HBP (High Blood Pressure)

is not permitted not to eat.

From the Hospital we expect the Doctor to give advice not to eat.

E.g a Lawyer prepare a contract for under 18 years old, the Buyer pays the seller. Later the performance become impossible.

The above action of An Advocate does not justify his application of knowledge he has in Law.

The above is a highly professional negligence.

Your actions, your performance should demonstrate the knowledge and expertise you have.

E.g in Court, If you represent the Plaintiff and you use your knowledge to advice the Defendant that is not allowed

Actions and conducts which a member of a profession should demonstrate.

ESSENTIAL REQUIREMENT FOR A LAWYER TO BE EFFECTIVE IN HIS OR HER PROFFESSION

You should be able to identify the Laws - of Main Land - Tanzania.

It is Mainland Tanzania Legal profession in Main Land Tanzania

Article 151(1) of the Constitution of the United Republic of Tanzania

Legal proffession is not a Union Matter

Qn Identify the Law and Roles governing the legal proffessional in the three sections of the Legal Proffessional

Each section has its own Law

Talking of:
- Judiciary
- Public Bar
- Private Advocates

All have Laws. So make sure you know all the Laws.

PRACTICING LAW IS NOT A UNION MATTER

If matters relating to practicing Law are not union matters then can the Advocate of Mainland Tanzania can be appear before the Court of Appeal sitting in Zanzibar. Will he be considered as practicing Law in Zanzibar or where?

To READ HERE Which practicing certificate will I be using?

Is my practicing certificate valid in Zanzibar?

You may, If you get "SPECIAL PERMITS" there must be the authorization for you to appear.

The Question is how far is that authorization go.

If that permit you to appear to the Hc you cannot appear to the Court of Appeal until permitted again.

How are they regulated?

By standards which are called "Code of Ethics"

The code of Ethics set boundaries/limits for the proffessionals of a particular proffession to observe in their course of practising their specific proffession.

Going below the standard is not permitted. Going ~~beyond~~ up you will be congrulated.

Basis of accused person that he is unethical is the Code of Ethics.

If you go beyond

Components to be observed / strictly complied with for the purpose of legal ethics | values

They may cut across and includes:-

1. Honesty
2. Intergrity
3. Fairness
4. Transparency
5. Accountability
6. Confidentiality
7. Proffessionalism
8. Obdience to the Law
9. Objectivity < Make objective decision not being biased A decision should be fair.

READ

It is very broad however - Proffessionalism

Objective - to follow proper standard, If it is a case consider the available evidence, look at the Law and make the reasoning

The Subjective decision is based on the decision maker's opinions, or influenced by other factors like corruption.

① I ignore the Law.
② I bend the Law
③ To please the receiver of the decision

Subjectivity prejudice the other. There is no point of analysing the evidence and Law. It is based on biasness.

Arrive at a fair Decision.

IMPLEMENTATION OF PROFFESSIONAL ETHICS
How are they enforced?

① Internal Regulation (Itself)
Eg TLS Act deals with internal Regulation

② Statutory Regulation

Means regulation for proffessional ethical standard by acts passed by the Parliament

Eg the Duty of confidentiality < ~~Doctor~~ A priest / Lawyer

If information will be disclosed then no one would be ready to disclose anything to the other person.

It could be very dangerous to disclose.

UNETHICAL CONDUCT
PROFFESSIONAL MISCONDUCT

TERMINOLOGIES

Learn to differentiate and

A proffessional who fails to conduct / acts conduct of contrary to his/her ethical standards commits ~~about~~ **UNETHICAL CONDUCT**

Normally unethical act/conduct attracts disciplinary proceedings against a proffessional who commits it.

NOTE: PROFFESSIONAL MISCONDUCT & UNETHICAL CONDUCT attracts pr Disciplinary proceedings.

BASIS OF DISCIPLINARY PROCEEDINGS

When a proffessional acts contrary to the proffesional Conduct and practice

Do not claim here at law school, here is a matter of discussion. Here is not a question of what is proffesional practice.

What amount a proffessional Misconduct from the scenario. It is not a question of claiming the Meanings. Use the knowledge to practice.

Know which the Code of conduct or of Ethics has been violated according to the scenario.

Important Read

E.g Legal Fee governed by the Advocate Remuneration Order, G.N 364 of 2015

- Contigency fee are not allowed
- If they agreed with a contract, Advice the Advocate Can the contract be valid
- The Law does not permit such kind of arrangement.

Narrow down the concept of proffessional ethics to its applicability within the context of Legal proffession in Mainland Tanzania

NOTE: The Major sections / Divisions of the Legal Proffession in Mainland Tanzania and Identify the applicability of the principles of proffession in each division / section

Some cut across some are specific for a certain section.

Eg Integrity cut across.

Each section will be covered.

Read PROFFESSIONAL CONDUCT & PRACTICE IN RELATION TO (VIS-A-VIZ) PROFFESSIONAL ETHICS IN LEGAL PROFFESSION

Be guided
Analyse / Examine
Are they similar
Find out their relationship

Read The Legal Framework for proffesional conduct and practice in Legal proffession in Mainland Tanzania

Examine the governing Laws for each of the three sections of the Legal Proffession in Mainland Tanzania.

① Identify all substantive Laws for each section
② Identify the procedural Laws for each section

Substantive Laws deal with the rights, obligations, duties.

Procedural Laws deal with / prescribe the means or legal process for enforcing rights and obligations

And the applicability of every Law. These are elementary

The training is on applicability.

If you are not ready to talk then practice will be difficult.

Proffessionals in the Legal proffession

DUTIES OF PROFFESSIONALS IN THE LEGAL PROFFESSION

Duties cuts accross the section but the applicability may vary.

Examine the duties when proffessionals are discharging their duties in different scenario:-

① Duty while in Court
Advocate, The Bench & the Public Bar
Eg in Criminal case
Each part has a duty to discharge in Court to administer justice. Be it civil or Criminal justice.

Who involved
① Private Bar
② Public Bar
③ The Bench / Judiciary

The Bench - to adjudicate

Public Bar - Representing the Republic

Private Bar - Has also duty to carry

Proffessionally, they are required to exercise the good conduct by following the code of conduct and Ethics.

The laws government governing the Magistrate, Public Bar and Private Bar are different.

It is unethical for an Advocate to coach the witness to mislead the Court.

For Judges we have Committee to deal with them.

Read ② A Duty when dealing with client.

③ When dealing with oppossing Council

④ When dealing with third party

⑤ Duty to the Legal proffession

⑥ Duty to the Public

⑦ A duty when appearing in Tribunal, commission, Board which allow Advocate to appear.

Read
- Commission for Mediation & Arbitration
- Tax Tribunal (TRAT & TRAB)
- fair Competition Act

⑧ Duty to Administration of justice.

Qn Which duties prevail when you have a conflict between your Client and Court, which one prevails?

IDENTIFY THE RIGHTS OF THE PROFFESSIONAL PERFORMER IN LEGAL PROFFESSIONAL WHILE DISCHARGING THEIR DUTIES IN DIFFERENT SCENARIOS & PUBLIC

Think of the right

Public bar - salary
Private bar - fee
└ The right to address the court

IDENTIFYING THE PROCEDURES FOR TAKING DISCIPLINARY ACTION IN CASE OF PROFFESSIONAL MISCONDUCT OR UNETHICAL CONDUCT IN EACH OF THE SECTIONS OF THE LEGAL PROFFESSION IN MAINLAND TANZANIA

THE APPLICABILITY APPLICATION OF THE PRINCIPLES OF NATURAL JUSTICE IN THE ENFORCEMENT OF PROFFESSIONAL CONDUCT AND PRACTICE IN MAINLAND TANZANIA

(1) ① Right to be heard
② Right to give evidence
③ Right to present her case

(2) The Rule against bias
- Religious
- Gender
- Trible

(3) Reason for the decision (Ratio decidendi)

If the principle of Natural justice are not observed they become grounds for Judicial Review.

When a person is allowed to make an application for Judicial Review.

Existing all the available remedies before resorting to the JUDICIAL REVIEW.

Now the time to file the JUDICIAL REVIEW

You must be able to know time.

SANCTIONS WHICH CAN BE IMPOSED DUE TO PROFFESSIONAL MISCONDUCT OR UNETHICAL CONDUCT

Read the Law, all sanctions are provided in the law.

Punishments.

REMEDIES FOR THE AGGRIEVED FOR THE OUTCOME OF THE DISCIPLINARY PROCEEDINGS

In case you loose the case and you are not happy. What is the remedy? What is the remedy? To Advocate & the other part

Same applies to State Attorneys / Magistrates / Judges e.t.c

THE APPLICABILITY OF THE PRINCIPLE OF / DOCTRINE OF DOUBLE JEOPARDY IN MAINLAND TANZANIA

Might occur if the unethical condition amount to Crime / criminal offence
Eg Corruption
Assault
Battery
Kutukana Matusi

Go & Ascertain

Double Jeopardy, whether the disciplinary proceedings can proceed / continue simultaneously with criminal proceeding while the same arise from the same act or omission.

CCBRT Hospital VS Daniel Selestine Kivumbi, Civil Appeal No. 437 of 2020 CAT at Dar es salaam
[TANZLII]

NOTE;
Section 33 of the Advocates Act Cap. 341 RE 2019
"No proceedings, whether civil or criminal shall be a bar

ETHICAL DILEMMA / CONFLICTS / CONTROVERSIES IN THE COURSE OF COMPLYING WITH AND ENFORCING PROFESSIONAL CONDUCT AND PRACTICE IN THE LEGAL PROFESSION IN MAINLAND TANZANIA

What is ethical dilemma in the process of enforcing?

There is a conflict between two correct position.

There are two conflicting decision between two morally principles.

E.g a person is accused of stealing a local bread in a Super-Market

You are a public prosecutor

You make investigation you discovered that he was taking it to feed his starving family.

That it is correct.

The issue is saving his family is correct and prosecuting the person is legally correct.

You are in a position to prosecute or not to prosecute him

The answer is Ethical Dilemma

Identify the viable solutions to deal with ethical dilemma which you may face.

You are a decision maker and you are bound by Code of Ethics

PROPER PROCEDURES AND PRACTICE IN MANAGEMENT OF LEGAL BUSINESS IN MAINLAND TANZANIA

- The concept Law Business in the context of

of professional conduct and practice

Should refer to professional business done by Lawyers or legal practitioners in the legal profession.

They offer legal service to client and charge legal fees.

You must have skills and knowledge for Managing business

Eg Firms, trust etc You should possess the knowledge

Know the Law you are required to comply with:-

- Labour Laws
- Taxation Law
-

Possess also Enterprenuership skills

From the beginning you must set objectives

There are several categories of Legal Business

Sole -
Partnership
Trust
Proffessional Corporation

Know the reason for each. Be guided by Enterpreneurship skills.

How about sharing Liabilities and profits?

You should know how to resolve the business. What you should know

Two Advocates intend to form a legal business in form of trust, Take them through the Procedures.

Whatever ~~taken~~ is in the document is taken as Covered.

From tomorrow you will start with Private Advocates

This was general.

Too many Rules and Regulations in this subject.

- If you do not see yourself in the LST Act then look at the Advocates Act.
- I raised a P.o that the Advocates Act does not recognize those who passed the Law School of Tanzania. He said the Act should be ammended. I just asked the question. If was true that there is no mention of Advocates in the Advocates Act.
- The LST Act should be read together with Advocates Act.

Stage 3

To petition to the Chief Justice for admission to the bar.

Note This is one of the task you will be required to do in SEMINARS

CONTENTS OF THE PETITION

— Academic Certificates from CPE to LST (PGDLP)

Do not attach other irrelevant certificates you will attract questions.

Previously, we were appearing before the CJ, nowadays you appear before the CJ and other Justices assisting him.

Stage 4.

Proof of Citizenship → NIDA ✓ nowadays
→ Birth certificates
(It proves that you have been born)
→ Passport

Stage 5

Certificate of character from a Senior Advocate who knows you or any other person who can certify as to your character

Should come from the other office, should not be your Employer.

Stage 6.

Appear for an Interview before the Chief Justice

Why this interview?

At the time you appear there, it is obvious that you are qualified.

You are not going to be asked the questions as to the knowledge of the Law.

Qn.

Are you Married?

Where are you working now?

Do you have a Library there?

Just get prepared

Stage 7

Attend the admission ceremony

This goes together with some Logistics. Not mentioned in the Law but you have to attend. During the Corona pandemic it was done online.

Attend, sign the Law Roll and get your Certificates

Stage 8

To pay the necessary disbursement
- TLS
- Judiciary
- TRA

WHAT ARE YOUR RIGHTS AND PRIVILEGES FOR YOU PRACTICING AS AN ADVOCATE

- You chose to practice Solo alone or in a firm
  Firm - Create a Team

ADVOCATES' RIGHT - You can enforce

① - To practice as an Advocate
- To represent your client
- To be paid

② To have audience in any Court/Forum or Tribunal where Advocates are allowed

E.g Nowdays we appear before the Primary Court.

Question: Do Advocates appear in Court Martial? NO

Do research.

③ To be remunerated in accordance with the Law.

Advocates Remuneration Order, G.N No. 362 of 2015

Advocates are allowed to negotiate

PRIVILEGES

- Advantage / favour / Exclusive entitlement

① Recognition as an Advocate

Attend, Sign the Law Roll and get your Certificates

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- Advantage / Favour / Exclusive entitlement

① Recognition as an Advocate

To be recognized is a privilege not a right. You cannot force someone to recognize you.

2 Recognition as an officer of the Court
Not a judicial officer.
As amicus curiae "friend of the court"

3. To bow
Question To whom do you do that?
To Magistrate or Coat of arms?

LEGAL FRAMEWORK GOVERNING ADVOCATES
PRIVATE PRACTITIONERS

① → The Advocates Act Cap. 341 R.E 2019
Section 2 provides for who an Advocate is.
It is immaterial whether you are practicing or not
We have [PRACTICING ADVOCATES
NON-PRACTICING ADVOCATES

Look those who do not renew. lizence.

If you are in the Roll you are an Advocate

The Roll is the List of Advocates in accordance with Part 4 of the Advocates Act.

Beneficiaries of Advocate are client.

S. 2 defines who the client is.

Not every person is your client

Who your client is?

A person who retains you to provide Legal service is your client. Lawyer-client r/ship

Or you are engaged to handle the case then there is r/ship.

Then, see one come to you to attest document. Is he or she your client? ~~No~~.

Ask your self. Q What about one asking you to prepare the Agreement. Is he your client?

A client should be liable to pay costs to the Advocate.

If you give Legal opinion, is he your client

Take even the one coming one time as a client. You are Connected with him. Consider as your client even if he goes away because you have a duty to confidentiality anytime.

Affidavit as to Marital status - You read the contents and see that he is single while he is married. You attest then, You will be in trouble:

Go beyond what you see under Section 2 of the Act.

2 The Tanganyika Law Society Act, Cap. 307 of - Establishes the TLS

Section 4 - The famous one during the Election. Section 4 provides for the objects Why was it established.

(i) To maintain and improve the standard of conducts and Learning of the Legal profession in Tanzania.

Again Section 7 has been the subject of research for many students.

Provides for the compulsory membership to TLS

The Language used is "shall" contradicting the Right of Association as per the Constitution of the United Republic of Tanzania.

Ngaleba, J.A challenged it, his Advocate was Francis Stolla

The case failed on technicalities.

He also challenged committal Proceedings.

To be forced is irritative.

3. The LAW SCHOOL OF TANZANIA ACT, 2007
Establishes the Law School of Tanzania

It provides for Mandatory legal Education for all Law graduates aspiring to practice as Lawyers / Advocates / Practitioners

To be read together with Advocates Act

4. LEGAL AID ACT

If you read the Application section it says the act to regulate & coordinate the legal aid service to indigent persons who are financial paralized

To recognize Paralegals and other matters.

It recognizes Paralegals because they offer the Legal Aid services.

Legal Aid means you are not supposed to charge.

It defines the Advocate by referring to the Advocates Act.

It defines the consumer of Legal Aid / aided person to mean "a person who has been granted the legal aid under the Act."

Not every person is entitled to the Legal Aid.

We have Legal Aid Centres, registered and recognized.

You must apply for Legal Aid. The TLS sends you a letter then you act accordingly, you help him/her.

Important — Part C of the Act
Legal Aid in Criminal Matters

The Registrar calls you directing you to help an accused

Read S. 33 of the Act, Legal Aid by the Order of the Court.

Note — Where an Advocate refuses then disciplinary Action may be taken. Especially by Order of the Court.

I shared Lord Murungo's scenario

"He was given brief, was required to travel from Arusha to Moragoro, He was facing a capital offence of Murder, He refused because money was small/less"

His practicing certificate was suspended.

5. The Advocates (Professional Conduct and Etiquette) Regulations, 2018 G.N No 118 of 2018
   - Everyone should have a copy

6. The Advocates (Admission and Practicing Certificate) Regulations, 2015

7. The ~~Advocates~~ TLs Ethics Regulation, 2022
   G.N No. 602 of 2022

Take all the Laws - Document sent

8 Advocates Remuneration Order, G.N 263 of 2015

Take all regulations too.

DUTIES OF LEGAL PRACTITIONERS

Make reference to G.N 118 of 2018

1 Duty to the Court
   is a paramount duty / superior

(i) Not to mislead the Court

(ii) Not deliberately delay the Court process.
(iii) To assist the Court to fairly determine dispute
(iv) To facilitate the Court to determine dispute timely
(v) To treat the Court with courtesy and respect
Avoid bad mouth.

2. DUTY TO CLIENT
Regulation 55 plus
- Treat the clients equally - Paying & Pro-bono clients
- To expediate the proceedings.
- Honesty & Respectfully
- To represent zealously

3. DUTY TO THE PROFFESSION
Regulation 113 plus
All duties listed there
- Duty to report misconduct of fellow Advocate.

4. DUTY TO MAINTAIN AND GUIDE DUTIES OF LEGAL ASSISTANTS
Legal officers' Misconduct, who is ~~the~~ responsible?
Advocates are responsible.

What do we do if you have Misbehaved in my Law firm?
Section 41 ~~§42~~ of the Advocates ~~Act~~
You are the Criminal

5. DUTY TO THE PUBLIC
6. DUTY TO FELLOW ADVOCATES
7. DUTY TO YOURSELF
Have fun, Socialize e.t.c Respect yourself.

COMMON PRIVATE PRACTITIONERS' MISCONDUCT

There is a challenge of Interpretation of section 22 of the Advocates Act

On about Misconduct of Advocate

Question "The Advocate we have behave the way they behave because they fear the Law not that they are ethical"

Critically discuss, not the Laws and regulations.

They fear the Laws & Sanctions

You enjoy when your dad is out not in.

Means you have fear and not ethical

You cannot do wrong in front of people

MISCONDUCTS

Is a dishonorouble act not fit for an Advocate. disgraceful act. It is Malpractice. In food we have Malnutrition.

Most of Misconducts are born out of breach of various duties / Ethical standard that they have. These standards are either codified or uncodified. Written & Unwritten.

NOTE Not written anywhere but it is you and your soul. They are not prohibited but ask yourself if it is not proper or proper.

Kushangilia Mpira Ukiviua shati, not proper but not prohibited.

If you feel guilty of doing something then that is misconduct.

For codified, the procedures are clear.

Question What about uncodified, How do we enforce them?

If Advocate do misconduct and such misconduct is not codified what are you going to do. What he did has lessen the value of the proffession, what do we do.

That life is personal to him, but what do we do then. And we do not have standard.

What do we use to measure the wrong. Under what standa

Answer The Advocate can be punished even for things that has not been codified. Even if it is not in the Law, he may be punished.

NOTE ETHICAL NORMS / STANDARD / VALUES are the Dos

E.g. Competence is a value
Act with proffessionalism
To be honest
To act with intergrity

Read G.N 118 of 2018

If you go against the above you create an issue
E.g - Dishonest
- To act without intergrity
- To act unproffessional

NOTE. Ethical Issues are breach of ethical standar

An Advocate can not be charged or punished for
Being dishonest
Incompetent
Unprofessional
etc

He can not be charged for breach of Ethics or standard.

(1) Say what exactly he has breached, what Misconduct? This specific Misconduct is what you can charge him.

Eg He was to open Client's Account and he did not, That is MISAPPROPRIATION OF CLIENT'S FUND

It falls within any ethical issue
Dishonest, Unprofessional, e.t.c

(2) USE OF ABUSIVE LANGUAGE
- Unprofessional
- Lack Integrity
-

Questions Questions to identify Ethical Issues, then Misconduct then where it falls in Ethical Issue

You charge using specific Ethical Misconduct not Issue.

COMMON MISCONDUCTS

1. Champarty / Contigency fees
   Arrangement with your client to pay the proceeds/outcome of the case.
   Take your Money act. Do not entertain this.

2. Missappropriation of clients fund.

3. Advertisements
   We are prohibited to advertise our service.

4. Practicing without a valid Practicing Certificate
   Advocates are required to renew their PC every year.
   Search through eWaki:
   It is a Misconduct to practice without a valid certifica
   He commits the following ethical issues:-
   - Dishonest
   - Lack of Integrity
   - Lack of proffessionalism

Question Section 41 of the Advocates Act
"Unqualified person not to act as Advocate"

This accomodates both ADVOCATE & NON-ADVOCA

We have been using this to confuse you.

Section 42
"Penalty for pretending to be advocate"

Where do you place Advocate who is practicing without Valid PC and Bodaboda Cyclist (His name not in c R

How to deal with the one without valid PC?

And where do we put Boda Boda or you?
S. 42

NOTE THIS — You cannot send Advocate to criminal court you send to the Advocates Committee

But one pretending is guilty of Criminal offences.

If you do not find the Wakili, they go to TLS to find him. TLS Database shows that he is not there.

NOTE THIS — Then use section 41 and 42, send him to the Police

The one pretending is liable under section 41 and 42 of the Advocates Act, Cap. 341 R.E 2019

Understand how to deal with Non-Advocates and those Advocates who

6. FAILURE TO REPRESENT THE CLIENT WHILE DULY PAID
7. UNDERCUTTING
8. OVERCHARGING
9. USE OF OFFENSIVE LANGUAGE
   S 22, FATUMA
10. REFUSE TO ACCEPT DOC BRIEF
    LORD MUMO what happened to him
    - Suspended.

ENFORCEMENT MECHANISMS FOR DISCIPLINARY ACTS FOR PRIVATE PRACTITIONERS

Is of three levels / Enforcement is of three level
① TLS Level
② Advocates' committee Level
③ Judiciary Level (Judges' Level).

How do you determine if this complaint has to go to the TLS, Advocates or Judiciary

It is a Complainant himself who decides you where to report you either to TLS or Advocates. Do not think of Judiciary.

The Complaint are filed to TLS or Advocates Committee

Judges' Power are exercised differently.

THE TANGANYIKA LAW SOCIETY LEVEL

Section 31 of TLS Act gives power to the Governing Council of TLS to make Regulations of carrying out activities of TLS.

In exercise of such power in 2022 the TLS (Ethics Regulations, 2022 were Issued

TLS Ethical Committee divided into two forums:
① The TLS National Ethics Committee
② Chapter Ethics Committees

Whenever a Complaint is referred to TLS may be

referred either to TLS National Committee or Chapter Committee. It is for the Complainant to decide. As to where to report, go to TLS level or Advocates Committee Level.

1. CHAPTER COMMITTEE

These are branches of TLS. They exist in almost all regions / zones. Tawi la TLS. It is called Chapter.

Dodoma, Tanga, Dsm is complicated, Ilala, Ubungo, Temeke, etc treated as Region.

. Dsm has chapters in every District.

Each Region has Chapters. If region few Advocates then zones.

2. TLS committees are governed by the TLS Act with Chapter Committee and National level together read with TLS (Ethics) Regulation, 2022.

If given a scenario that a complaint lodged to TLS, do not touch the Advocates Act.

If you advise to report to TLS, do not touch the Advocates. Only touch the TLS Act and the Ethics Regulations

Note this — TLS Rules of professional ~~Ethic~~ Conduct and Etiquette go and dump them! It has been replaced by The TLS (Ethics) Regulation of 2022

READ — Read the Regulations

Introduces the Disciplinary authority
Establishes the chapters
Constitution of the chapters

Note Regulation 16 provides for sanctions that may be imposed against an Advocate.

① One of the sanction is return of property of your Client.

Example Alinyang'anya Funguo ya gari ya Mteja kwakuwa hakulipwa. Aliitwa na akaambiwa arudishe gari.

② You may be ordered to perform a duty If your client will be ready for you to proceed.

NOTE THIS You can sue the client if you have not been paid. It is a pure contractual matter

If an Advocate is aggrieved by the sanction he may appeal but we do not see the remedy for the Complainant? This has been a subject of research.

It is not expressly provided but the other option is TO SUE FOR BREACH OF CONTRACT

③ Refund the Money

④ Ordered to make apology e.t.c

HOW DO YOU APPROACH THE TLS FORUMS
In Chapter or National Committee
National seats in Dar es salaam
If you are in Katavi, lodge there.
National Committee can order the complaint be heard somewhere Convenient to him.

One from KATAVI was lodged in National Committee because he said he is attending Medical treatment at Dar es Salaam, so he was not referred back. It was Convenient.

Read Powers of the TLS Ethics committee.

The TLS Ethics Committee by then had no teeth to bite. We used to issue orders and if not adhered, we refer the Matter to Advocates committee.

LAW

NOTE Nowdays the decisions of the TLS committee have teeth to bite. The decision is enforced as a Decree of the District Court and by the District Court. Read Regulation 17 of The TLS (Ethics) Regulations, 2022

You can Execute through form of the De

As for National Committee, the Decree is enforced as the Decree of the High Court.

Follow the Execution process

NOTE How can you execute the decision of the Advocates Committee.

DOCUMENTS

Letters only

ADVOCATES COMMITTEE LEVEL

Assume the Claimant sent you to this committe

Prior to 2021, there used to be the Advocates committee as SINGLE and AUTONOMOUS forum responsible for dealing Ethics under the Advocates Act.

We are talking of Advocates Act. It was ADVOCATE COMMITTEE, sitting at DSM receiving complaints from all over the country

LAW

Following Amendments Through the written Laws (Misc Amendment Act No. 3 of 2021, The Advocates Act was ammended to restructure the Act / committee.

Now we have committees not committee

Section 4A was added - so have ammendments so as you can read the Law together.

Section 8 Establishes Regional Advocates committee

① REGIONAL ADVOCATES COMMITTEES
② NATIONAL ADVOCATES COMMITTEES

Understand their differences, Governn

① REGIONAL ADVOCATES COMMITTEES
② NATIONAL

Governed by the Advocates Act read together with G.N 118, 2019 Regulations
- The Advocates (Disciplinary and other Proceedings) Rules, 2018 Made under section 14 of the Advocates Act.

Composition - Section 4A, gives who enters in the

Regional committee
- Registrar of the High Court in the Region (Chairperson)
- State Attorney of the Region
- Chapter Convener - Rarzi wa Hulco (Member)
- One public officer who has knowledge of the Law appointed by the committee (Not a Lawyer) - Secretary.

Read all the ammendments.

THE NATIONAL ADVOCATES COMMITTEE
- Judge of the High Court - Chairperson
- TLS representative
- Representative of the Attorney General DPP, Deputy DPP, Deputy A.G (Mostly).

This is what FATUMA KARUME is complaining. The A.G is complaining against you then one of the sitting Member is from his office. NO FAIRNESS

HOW DO YOU APPROACH THESE COMMITTEES
There are two ways in Regional & National

1 Using prescribed Form No. 1 Supported by an Affidavit.

2 By using a Formal letter of complaint

Read Rule 4 of the Advocates (Disciplinary & other Proceedings) Rules, 2018

1.
2.

Question
OPA

Complicate
If you d
understand
ask Pleas

HOW DO YOU RESPOND

Two ways of responding:-

1. Counter affidavit where complaint is by form No. 1
2. If letter, you reply by using STATEMENT OF REPLY

The Rules are very clear. Read them all.

Question OPA

Proceedings are held in Camera. Exclusion of the general public.

SANCTIONS WHICH MAY BE IMPOSED

- Read powers of Regional & National Committee
- Where do you go if aggrieved.

Complicated If you don't understand ask Please

JUDICIARY LEVEL

JUDGES DISCIPLINARY POWERS OVER ADVOCATES

Judges only

If you misbehave before Magistrate she know where to send you whether TLS. or Advocates committee or Court Cotempt.

Judges has power to deal with Advocates Ethics.

Are exercised in the cause of the Proceedings not Kwenye corridor or Bar. While in the Court Room only.

Vested to the Chief Justice and Judges only.

The Justices of Appeal not mentioned

Question. What if you misbehave in the Court of Appeal and the Coram is not constituted of Chief Justice?

It is possible to misbehave in the Court of Appeal.

Contempt or refer you to Forums or to Chief Justice

I do not know.

Question Here A lot of On

SECTION 22 OF THE ADVOCATES ACT, Cap. 341 R.E 2019

FATUMA KARUME'S CASE, See what happened there.

You have the CJ and Judge by the High Court

CJ - appeal to CAT

By Judge - Appeal to the Advocates Committee

A Judge can suspend you temporarily pending reference or disallowance

TWO TYPES OF PUNISHMENT BY THE JUDGE OF THE HC

- To give you a complete punishment.
  Suspend for One year or Six Months

REMEDY

To appeal to the Advocates Committee.

PROBLEM

If punishes you temporarily (not complete) e.g.

① PENDING REFERENCE

② DISALLOWANCE

No remedy but if you read clear it is there

Who do the reference / disallowance.

It is done by the High Court Judge to the Deputy Registrar of the High Court.

If reference by the Judge to the High court is not made then Advocate make an APPLICATION FOR DISSALLOWANCE TO THE HIGH COURT

"Read the case of "FATUMA KARUME"

Do not confuse section 22 and section 24

REFERENCE: By the Judge
Decision will be of the High Court appeallable to the Advocates' Committee

NOTE: Karume was suspended by Feleshi, J (as he then was) he said pending reference ~~to the reference~~ to the Advocates Committee which is IRREGULAR
It do not there.

There No DISSALLOWANCE ORDER

She filed Revision to the High Court.

She went with section 28 of the Advocates Commit Act.

She was aggrieved then she went to the Court of Appeal.

DOCUMENT FOR DISALLOWANCE

① Chamber Summons } Jurisdiction is HIGH COURT
② Affidavit

Question If you see pending reference - Apply for dissallowance.

Complete suspension and Uncomplete suspension.

APPEAL High Court's Judge decision - Aggrieved you go to the Advocates Committee - If aggrieved back to the High Court - Paunel of three Judges - Then aggrieved to CAT (Memorandum)

DOCUMENT

Where the Law is silent use PETITION

for Advocates committee

High Court

Memorandum of Appeal

Court of Appeal

NOTE If the case is referred by a Judge to the High Court and the reference is heard, And you are aggrieved

Then appeal to the ADVOCATE COMMITTEE.

① REFERENCE
High court's Judge

Refer to another Judge

Aggrieved by the decision

Go to Appeal to the Advocates Committee
(Petition)
Aggrieved then Appeal to the High Court
(Petition)
(Three Judges)
Then aggrieved go to the Court of Appeal
(Memorandum of Appeal)

② If DISSALLOWANCE APPLICATION
You apply to the High Court
(Chamber Summons & Affidavit)

If the suspension not allowed then

That is a Ruling from your Application

Here you appeal against that Ruling to the Court of Appeal of Tanzania
(Memorandum of Appeal)

③ The Chief Justice decision

You Appeal to the Court of Appeal of Tanzania.

LECTURE 003

19/02/2025

HON. KISWAGA - PRM
IN-CHARGE - KISUTU
(20 years in the Bench since 2005)
PRM with Extended jurisdiction

PROFFESSIONAL CONDUCT & ETHICS FOR JUDICIAL OFFICERS - EXPERIENCE SHARING

- Why is it important to study proffessional conduct & Ethics.
- Meaning of proffessional conduct
- Concept of Ethics
- Who is a Judicial officer
- Why Ethics for Judicial officer
- Law on Code of conduct and Ethics. Why Laws?
- Judicial culture
- Conduct for Judicial officer
- Legal Framework governing Ethics for Judicial officer
- Ethics Committee
  - Primary
  - District / Resident Magistrate
  - High Court Judges
  - Judicial commission

Proffessional ethics and conduct helps the following:-
1. To foster trust to the Public
2. Guide the decision Making
3. Accountability
4. Promote culture of integrity

Ethics should be codified so as you can be punished.

Proffessional conduct is the accepted manner in which a person is reasonable expected to act. It is not for the Judicial officers only. Engineers, Doctors, Teachers has it.

Ethics, there are the acceptable principles in the community expected to be followed.

The Judiciary is expected to dispense justice with ethics.

Ethics are just moral principles, they are not offenses and you cannot be punished for Lack of ethics.

Ethics governs the human conduct
- Integrity
- Honesty
- Fairness
- Value
- Choice
- Honour
- Principle
- e.t.c

Who is a Judicial Officer?

Act Section 3 of The Judicial Administration Act No. 4 of 2011

"A person who is in the service, Any appointee to deal with adjudication and determination of cases which includes Judge Assistant" (Help Judge to conduct research - who is also a Primary Court Magistrate).

Why it is important to have Code of Ethics and Conduct for Judicial officers

1964 Mwl. Nyerere statement "Kazi ya Uwakili au Ujaji inahitaji Maadili and Nidhamu".

Maadili is ~~while~~ when at the Court and outside the court.

You cannot find anywhere the ~~JUDICATA~~ "JUDICIAL CULTURE"

If you do not bow then you are committing an offence of disrespecting the court.

It is not disrespect to Kiswaga but to the office.

We bow to the Title not to the person in his name.

Everything depends on where you are.

Practice of Judicial culture is always done.

Why code of conduct and Ethics for Judicial officers.

1. In order to have Independent strong and respectable Judiciary.
2. Public confidence to the court and trust
3. In order to have highest standard of Ethical ~~values~~
4. Accountability
5. To guide Judicial officer.

THE LEGAL FRAMEWORK GOVERNING JUDICIAL OFFICERS

1. The Constitution of the United Republic of Tanzania Art. 107 A "Judiciary is the final in the dispensation of Justice
2. Public Service Act

Give relationship between public service & Judicial service Act. A Judicial officer is a Public servant.

There is code of Ethics for Public service of 2005

3. The Judiciary Administration Act, Act No. 4 of 2001

INTERNATIONAL FRAMEWORK FOR JUDICIAL OFFICERS

1 The Banglore Principle on Judicial Conduct

Miscellaneous and Guidelines

1. G.N No. [illegible] of 2020 - The Code of conduct and Ethics for Judicial offices.
2. Muongozo wa Uendeshaji wa Kamati za Maadili za Mahaka... ma, 2019

Question Here → PRINCIPLES

- Intergrity
- Competence & diligence
- Impartiality
- Impropriateness
- Judicial Independence ← work without interference
  uphold, safeguard and entertain independence of Judiciary ~~offices~~ by Judicial officer.

If you receive public critism what will you do? That your decision will be influence, what will you do?

You have to protect the independence of Judiciary. Remaining silence is also an answer.

INTERGRITY

- Involves good behaviour, honest, Morals, Judicial behaviour, Corruption, discpline e.t.c

As a Judicial officer you need to have high intergrity.

PROPRIETY

You should not do what a reasonable person cannot do. An reasonable mind can see you are wrong.

It will create a perception that a Judicial Officer acted wrong/improprietely. The standard should be very high.

Case Haruna Chakupewa vs Christopher Mtalukindo
Patrick
"If I were to act, in their capacity as commissioner for oaths I should say no thanks, it is very embarrassing for a Magistrate to be subjected to cross-examination.
Magistrate alisaini kiapo

COMPETENCE & DILIGENCE
Use your Intelligent, do not abuse the court process.
It is not expected for a Magistrate to take drugs and Alcohol as it lessen the mental capabilities.

IMPARTIALITY
Case Ramadhani Mlindwa vs Republic
The purpose of maintaining Impartiality is to maintain the Trust to the Public

AG vs Anyang Nyongo & Others, 2007 1EA ~~Vol~~ 12*
Judicial impartiality is a bed, you should act fairly

JUDICIAL ETHICS COMMITTEES
PRIMARY COURT

1. We have the JUDICIAL SERVICE COMMISSION
- Chairman is the ~~Judge~~ Chief Justice
Provided in the Constitution.
- Judicial servia commission can delegate its function, to the Judicial Ethics Committees, Secti. 40 of Th
2. Judges Ethic Committee
S. 27 of The Judiciary Administration Act
3. Judicial Officers Ethic Committee
S. 46 of The JAA

↳ Regional Judicial Ethics committee

4. Regional ~~and~~ District Ethics Committee
5. District Ethic committee
   ↳ District Judicial Ethics committee

PRIMARY COURT MAGISTRATE

Appointed by Judicial service Commission under S. 29 of JAA

Qualification for PCM
→ Holder of Diploma in Law (Previous position) - The law

Nowdays you cannot be employed if you do not have Post graduate Diploma in Legal Practice.

DISCIPLINARY PROCEEDINGS FOR PCM

If PCM do any proffessional misconduct a unethical thing or breaches the code of Ethics and conduct.

There must be a COMPLAINT filed by a Complainant who is any person (Member of the Public), Judge in-charge, Minister.

To be sent to either:-

1. The District Judicial Officers Ethics Committee
   S. 51 of JAA

Members
- District Commissioner - Chairman
- RM - In-charge of DC
- DAS (District Administrative Secretary) - Secretary
- Two members appointed by RC ← Question
  - Dini } Highly respected people
  - Public }

- Two Judicial officers appointed by Judge in-charge

FUNCTIONS OF DISTRICT JUDICIAL OFFICERS ETHICS COMMITTEE

1. To receive and investigate a complaint against PCM
2. To conduct inquiry for any complaint from the Judge In-charge. Directed to do by in-charge, report back or take action
3. Directed by Minister for Legal affairs.

Complaint should be sent to DAS (District Administrative Secretary) by.

How do we file it?

By word of Mouth / orally

or

DOCUMENT By a formal letter

Question After deciding, the DC Judicial officer Ethics Committee forward the Matter to the Judge In-charge who shall forward Judicial officers ~~Service~~ committee.

PROFFESSIONAL CONDUCT & ETHICS IN THE DC & RM's Court

Who sits at DC & RM, what is their difference.

The only difference is the sitting court. They are all the same.

RMs at Kisutu can hear all case within the Region while the DC hear the cases within the District where it has been established.

Territorial / Geographical jurisdiction.

- Two Judicial officers appointed by Judge in-charge

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RESIDENTS MAGISTRATE for RM's Court & DC

Regional Judicial officer Ethics Committee
S. 50 of the JAA

- RC - Chairman
- RM - incharge
- RAS - Regional Administrative Secretary.
- Two members highly respected Dhivehi Norm of
- Two Judicial officers appointed by Chief Judge in the region
- If there is the office of AiG, then Senior state Attorney is a Secretary. If not available then, RAS will be ~~Sta~~ the Secretary.

Functions

1. Receive and investigate the complaint against the RM of RM's Court or DC
2. To conduct inquiry from Judge In-charge about any complaint, to report that inquiry to Judge In-charge
3. Any other task directed in writting by the ~~Chief Justice~~ Principal Judge

After investigation, report should be direct sent to the Judge in-charge.

You cannot be a Judge on your own case.

If In-charge is complained of, he cannot be a member of the committee

For the coram to fit, Chairman and three members.

Any person can lodge a complaint

Where?

To secretary

Before calling for the meeting, he should first forward to the Judge in-charge of the zone Section 51(8) of JAA

A complaint filed against the Resident Magistrate in-charge, the complaint to be forwarded to the Judge in-charge by the secretary and Judge in-charge shall forward the same to the Judicial officers Ethic Committee-Chairman is Principal ~~Ch~~ Judge. It is forwarded for further action.

Principal Judge or Chief Justice after receiving the Complaint may suspend the RM' In-charge pending further determination of the disciplinary proceedings.

Regional committee should submitt the Repart to the Judge in-charge to Judicial officers Ethic Committee to Judicial Service Commission.

It is important for other organs of the government to be in the committee plus other individuals. This is for check and balance

Kelvin go and confirm this

The District Judicial officers Ethic Committee and The Regional Judicial officer Ethic Committee do not make decision they only make repart plus recommendations.

They only recommend to the Judge in-charge or Principal Judge

REMOVAL FROM THE BENCH DC, RM or PCM

Only Judicial service Commission can do that

Read Section 35 of JAA it provides for grounds:-

1. Misconduct incompatible with the holding of the office.
2. Gross negligence
3. Breach of the code of the Judicial Ethics
4. Bad reputation incompatible with holding the office

The nature of human being is rejection. Hate for no reason.

If one looses a case, he/she hates the Judicial officer for no reason. So the committees should be very careful

The District Judicial officers Committee can:-

1. Onyo kali
2. Onyo la kawaida.

REMEDIES AVAILABLE FOR THE ONE AGGRIEVED BY THE DECISION OF JUDICIAL OFFICERS COMMITTEE & JUDICIAL SERVICE COMMISSION

CASE Hamis Babu Ally Vs Judicial Officers Ethics Committee & 3 others (Civil Appeal No. 448 of 2021) [2024] TZCA 1010 31 October 2024

- Misconduct incompatible with holding of a Judicial office and gross negligence in discharge of Judicial functions

He was a Magistrate and was dismissed

Remedy — Aggrieved by the decision he decided to file JUDICIAL REVIEW as a Mandatory requirement as under Rule 5(1) of the Law Reform (Fatal accident and Miscellaneous Provisions) (Judicial Review Procedure and Fees) Rules, 2014

Law

Seek leave first before the High Court to file the Judicial Review.

Judge sitting to determine Leave to file Review | Judicial should not deal with matter of the Main Application

The Court of Appeal said that the High Court misdirected itself not to grant the Application for Leave as it unnecessarily indulged to the merit of the Judicial Review

JUDICIAL REVIEW PROCEEDINGS

1 Stage one

Seek for Leave
- Chamber Summons
- Affidavit

Even allegations can Remove a person from the office.

2 Stage Two

This is after the Leave is granted.

You file Application for Leave
- Chamber Summons
- Affidavit
- Statement in respect of which leave was granted.

Rule 8(1) (a) of The Law Reform (Fatal Accidents and Miscellaneous Provision) (Judicial Review Procedure and Fees) Rules, 2014

LECTURE 004

20/02/2025

Hon. Kiwaga - PRM

- Judicial officers Ethics Committee
- Judges Committee
- Judicial service Committee.

JUDICIAL OFFICERS ETHICS COMMITTEE

Deals with Misconduct conducted by Registrars, PCM and the RMs. It cross-cut.

COMPOSITION

- Principal Judge
- High Court Judges two appointed by CJ
- Judicial officers appointed by ~~CJ~~ CJ
- The Registrar of HC - Secretary

} section 46(1) of JAA

Hold the service for three years and can be appointed for one more term.

The coram must be full and members are not supposed to delegated.

Who may Lodge a Complaint

- The Committee itself may initiate a proceedings
- Any Advocate
- Any person interest, having evidence.

Judicial service Commission may refer Matter here.

- Complaint must be in writting in Writing
- Must contain details
- Must cover circumstances

Section 35 and 41 provide for matters which a Complaint may be lodged:-

① Misconduct incompatible with the holding of judicial office

② Gross negligence in discharge of Judicial

How a complaint is determined.

(1) A committee receive the complaint
Sit and deliberate if there is a cause of action
(2) The complaint will be served to the Judicial officer
(3) The Judicial officer will be required to reply
(4) The committee will scrutinize the reply
(5) The accused will be ordered to appear in the committee
(6) During hearing, the Judicial officer has a right to be represented or he may appear himself

Hearing is done like normal case. It is the same as other normal Criminal or civil case.

Charge will be read to the accused, whether he pleas guilty or not plus whether he admits.

To be guided by the Procedures under the ~~Part~~ Schedule Fourth.

PROCEEDINGS

(1) Charge read over
(2) Plea taking { Guilty / Not guilty
(3) If not guilty hearing will start
(4) The one who initiate the proceedings must come to testify
(5) The accused will be given ~~to~~ an ~~appointme~~ opportunity to ask questions
(6) The Committee will ask questions
(7) Defence case will open
(8) He will be allowed to call witness.
(9) The decision will base on evidence
(10) If not proved, the Judicial officer will be acquitted.
(11) If proved, he will be convicted
(12) The accused will be given an opportunity to Mitigate.

(13) If no reference is made to the Judicial Service Commission, then the Judicial officer Ethics Committee will pass sentence.

(14) If the offence is so serious then it will be referred to the Judicial Service Commission.

The grounds for removal are those under Section 35(2) of JAA

Together with section 41 (3) of the JAA.

BURDEN OF PROOF

Balance of probabilities as per section 35(2) of the JAA

SANCTIONS BY JUDICIAL OFFICER ETHICS COMMITTEE

(1) Written warning (Onyo) 1st time
(2) Repriman d (Onyo kali) 2nd time
(3) Stern Warning ( ) 3rd time
(4) Suspend while making reference to the Judicial Service Commission
(5) Suggest to the Judicial Service Commission for a Judicial officer to be remove d from the office.

PROFFESSIONAL MISCONDUCT COMMITTED BY JUDGES OF THE HIGH COURT & PRINCIPAL JUDGE

Who is Jaji Kiongozi (Principal Judge)?

Presidential appointee

Special assistant of Chief Justice

Head of High Court and all courts subordinate thereto.

He supervise all activities.

Principal Judge has no Roll Number

Because he is only alone.

High Court has one Main - Registry established by the Law

JUDGES ~~OFFICERS~~ ETHICS COMMITTEE

Deals with Judges and Justices of Appeal

Section 36 - 45

1. To receive and investigate complaint
2. To hear the complaint

   If it is grave, they forward to JSC

1. Justice of Appeal appointed by CJ
2. Three Justices appointed by CJ
3. Three Judges appointed by CJ
4. Secretary - Chief Registrar

TENURE

3 Tenure but one more round.

If one of the member is an accused then CJ may appoint another. No delegation of power.

Bound to inform any complaint lodged to the Judicial Servia Commission. It is mandatory.
Any complaint before it should be heard must be reported there

POWERS TO MAKE SANCTIONS

1. To make sanctions like warn or Reprimand
2.

Who can be brought here?

1. Justices of Appeal
2. Principal Judge
3. High court Judges

Section 36 establishes the Judicial officers Ethics Committee

Judges Ethics Committee S. 37(1)

Functions of the Committee S. 38 of JAA

1. To receive and investigate complaints against Justices of Appeal, the Jaji Kiongozi or a Judge
2. Serve complaint
3. Forward the complaint to the commission
4. Hear the complaint

PROCEDURES OF HEARING CASES

found under the fourth schedule of JAA

Read section 39, 40, 41, 42, 43, 44, 45, 47(3) plus the fourth schedule.

The Judicial Service Commission delegates even sanctions to the Judges Ethics Committee.

Section 33(1) - Delegations of functions by the Judicial Service Commissions.

The committee can do the following

1. Warn
2. Reprimand for minor matters not grave offences.

If the offence is grave done by a Judge. The Judges Ethics Committee shall refer the matter to the Judicial Service Commission.

Who may raise a complaint against J.K,

- Committee on its own motion S. 39
- Or S. 40(1)
  - Judicial officer
  - A law officer
  - Govt Agency
  - An advocate
  - A person who has an interest in the matter
  - Any one who can produce evidence

40(2) - A complaint shall be filed with the secretary to the commission, or the committee, as the case may be.

Chief Registrar
Registrar of the High court
Registrar of the Court of Appeal
} Not sent to Judicial Ethics committee - Appointee of President.

COMPLAINT

- In Writting
- Concise statement of fact
- How the act was done or omitted to be done.

And the complaint shall focus on the following;-

Section 41 (3)

(a) Handling of cases

(b) Allegation of corruption

(c) Behaviour inconsistent with the Code of Judicial Ethics

(d) Inability to perform the functions of a Justice of Appeal the Chief Kadhi or a Judge.

Service should be done

Reply within 21 days 42(a) of JAA

Any matter dealt by Judges Ethics Committee shall forward to the Judicial Service Commission

- Handling of complaint by the committee Section 43 of JAA

- If the Justices admit then shall be warned or reprimanded

- Judicial Service Commission has mandate. Big Mandate.

JUDICIAL SERVICE COMMISSION

Established under Article 112 of CURT

Powers

- Advise President on appointment of High Court Judges, Registrars, Justices etc
- Advise on inability of Judges
- Advise president on conduct of Judges
- Appointment, confirmation, Discipline to Magistrates and Non-Judicial officers

Establishes various committee

Members

- Chief Justice
- Attorney General
- Justice of Appeal appointed by president
- Jagi Kiongozi
- Two members appointed by President
- Chief Court Administrator - Secretary

Functions / other functions.

- Scrutinize complaint against a Justice of appeal e.t.c [S. 29 of JAA]
- Take an administrative measures against Judges

- It has delegated some powers to other committees Read Section 33 (2) of JAA
- Notwithstanding the delegation, the commission may exercise its duties.
- It appoint Registrars and Court Administrators
- Power to remove / terminate an Judicial officer except those appointees of the President.

PROCEDURES

- To be guided by the procedure stipulated in the First Schedule to this Act.

What if Justices of Appeal or High court Judge has committed "grave offena"? Where do we forward.

President

Section 29(1)(iv) of JAA

The President will be governed by Article 110 of the Constitution

Disciplinary proceedings or action against a Judge/ Justices of Appeal
Article 110A

1. The president will appoint the commission
   Half of member shall be either Judge or Justices from any of the Commonwealth County. Article 110(2)A

2. The Commission to conduct inquiry and advice the president to remove the Judge from the office or not to remove.

How to deal with Justices of Appeal
Article 120A of the Constitution of URT, 1977