

A CRITICAL ANALYSIS OF THE PROPOSED BILL

WRITTEN LAWS (MISCELLANEOUS AMENDMENTS) (NO.2) ACT, 2021

ITS LEGAL IMPLICATION TO PRIVATE LEGAL PRACTITIONERS' IN

TANZANIA

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On 17th January 2021 the government submitted a proposed bill written Laws Miscellaneous Amendment No.2 of 2021 of which among other things it propose to amend the Advocate Act Cap 341 R.E 2019.

Keys areas that are proposed to be amended within the Advocate Act

(a) Amendment of section 2 of the Advocate Act

Section 2 of the Advocate Act is proposed to be amended of which the word committee is replaced by the word National Advocate Committee, this is to mean the current Advocate committee is going to be re-structured from being an organ of advocates into a national centered organ where it will have other branches at the district and regional level. This entail that advocate may be punished by regional advocate ethics committees something that may have legal implications in the eyes of the law which I am going to discuss later on.

(b) Amendment of part II of the Advocates Act

The amendment is proposing to amend part II of the advocate Act by deleting of the word committee and substituting for the word committees something which entails that we are going to have other advocates ethics committees from different levels

being the district and regional level comparing to the one that we are having now which is more centered. This also may have legal implications in the eyes of the law especially on the composition of the committees, functions and powers which I am going to discuss later on.

(C) Amendment of Section 4 of the Advocates Act

The written Law miscellaneous amendment is proposing to amend section 4 of the Act by deleting in the marginal notes the word Advocate Committee and substituting for it the word Establishment of the National Advocates Committee and inserting the word National before the word Advocates, this entail that the structure of the current advocate committee, functions and powers is going to have a face of a national committee and probably it may have an appellate powers from decision originating from the regional advocates ethics committee comparing to the current one which has only appellate powers originating from decision of judges of the High Court. This also has legal implication in the eyes of the law to private practioners and the legal fraternity in general which I am going to discuss later on.

(d) Addition of Section 4A

The amendment is proposing a new section 4A which is establishing Regional Advocates Ethics Committees, which shall be composed by the High Court Registrar of the Zone where the High Court is situated who shall be the chairman, the state attorney in charge or the regional prosecution officer and a Chapter Convener of the Tanganyika Law Society in the region, but also the committee may appoint any public officer to be a secretary of the committee. Its legal implications in the eyes of the law to private practioners shall be discussed later on

(e) Addition of Section 4B

The amendment is proposing the insertion of a new section of which among other things it provides for the powers of the Regional Advocate Ethics committee, of which the committee shall have jurisdiction to hear and determine:

- (i) Any application by an advocate to procure the removal of his name from the roll,
- (ii) Any application by any person to remove the name of any advocate from the roll,
- (iii) Any allegations of misconduct made against any advocate by any person

This re- structuring may have legal implications to private prictioners and the legal fraternity in general which shall discussed later on,

(f) Amendment of Section 13 of the Advocate Act

The Miscellaneous amendment is proposing to amend section 13 of the Act in which among other things the powers of the National Advocate committee shall be to receive appeals from the Regional Ethics Advocate Committees. In other words, this entails that all allegations and complaints against advocates shall have to be lodged to the Regional Ethics Advocates Committee and not the National Advocate Committee which shall have only appellate jurisdiction to all cases originating from decisions of the Regional Advocates Ethics Committee and decisions originating from judges of the High Court in accordance to section 22(2) (c) (i) of the Advocates Act. Simply the National Advocates Committee shall have no original jurisdiction on all allegations and misconduct done by advocate in the course of their practice except appeals emanating from Regional Advocate Ethics Committee.

In other language, the power of removing an advocate from the roll by the current advocate committee is like abolished and transferred to the Regional Advocates Ethics Committee which shall have the power to do so. The new proposed National Advocate Committee shall be an appealable organ and rest of its powers is transferred. This has also legal implications which shall be discussed later.

Legal Implications of the Bill Written Laws (Miscellaneous Amendment) (No.2) Act of 2021 to Private Practitioners and the Legal Fraternity in general.

Despite of the fact that the intention of the amendment might be good, however there are legal implications that private practitioners and the legal fraternity in general may encounter to be discussed herein;

- Establishment of the Regional Advocates Ethics Committee, I have no problem with the establishment with this committee, my problem is on the composition and powers of this committee, the committee shall be composed of by the Registrar of the Zone where the High Court is situated, the state attorney in charge of the region or the public Prosecution Officer and the Chapter Convener of the Tanganyika Law Society, this composition may result into injustice. Can you imagine the committee being chaired by a registrar who is neither a member of the Bar nor a member of the Bench at the time when he is saving his position as a registrar, the state attorney in charge who is a public servant in the meaning of the Public Service Act, then how comes a public servant being a part in an important committee like this, what if he has grudge against such an advocate may they met in court and he was imbalanced by such an advocate in terms of arguments and then he decide to take the matter before the committee, the same to the prosecution officer in

charge, I think this is not the proper composition though it is more less the same with the composition in the current advocate committee, the different is the attorney general, the chief Justice and the Director of Public Prosecution are presidential appointee but also the chief justice is head of the Judiciary. Advocates may be punished jealously.

My second thought on the this committee is on the powers and Jurisdiction of the Regional Advocate committee, the committee is vested with powers to remove an advocate from the roll, I think the committee is over powered, I expected the legislators could have taken an example from district and Regional Magistrates Ethics Committees where they are only vested with powers to recommend to the Judicial Service Commission and not firing a magistrate from employment. Probably they could have come with the same approach, the Regional Advocate Ethics Committee just recommend an advocate being removed from the roll to the National Advocate Committee, their decisions could just remained in the recommendation status like what judicial committees in the Judicial Administration Act has. Over powering the committee will definitely result into unfair decision considering the composition of the committee. But also the secretary of the committee may be appointed by the committee among a public servant this is also a problem. As advocates we don't think if the current Advocate committee has failed to do so.

The other issue that may result into injustice of the accused person is the quorum of the meeting forming part of a decision removing an advocate from the roll, according to the amendment, two members of the Regional Advocates Ethics Committee of which one of them being the State Attorney in charge or the Regional Prosecution Officer shall form a quorum, this entails that even if an

advocate does not attend the meeting when issued a summons, two people may make strong decisions like removing an advocate in the roll, this is unfair at all.

The other problem with the amendment is, according to the amendment, after receiving allegations of misconduct or complains the secretary of the committee shall forward the same to the Judge In Charge of the zone where the High Court is situated, again what is the purpose of referring the complain to a person who is not a member to the committee, what is the logic behind, after all judges are vested with powers to punish advocates when they behave in front of them in the course of proceeding under Section 22 of the Advocate Act. An act of forwarding the complain to the judge in charge entails that the committee is not autonomy, if the chairman of the committee is a registrar I don't see the logic of forwarding the same to the judge in charge, what for, the decisions of the committee may be influenced by powers of the judge in charge. This may result into injustice when making decisions relating to advocate's future.

- Establishment of the National Advocate Committee, the amendment is proposing the establishment of the National Advocate Committee, I don't have any problem with this committee, it might be a good move, my problem is on the powers and jurisdiction of the committee, it seem the committee is left more with appellate jurisdiction emanating from the Regional Advocate Ethics Committee but the challenge is the composition of the Regional Advocate Ethics Committee is more less the same with the composition of the National Advocate Committee, example the Regional Advocate Ethics Committee is composed of the Registrar who is shall be the chairman, the state attorney in charge or the Regional Prosecution Officer and the Chapter Convener of the Tanganyika Law Society. The National Advocate Committee is composed of the Attorney General, The

Director of Public Prosecution, the Chief Justice and the President of the Tanganyika Law Society, Imagine an advocate appealing against the decisions of the Regional Advocate Ethics Committee removing him from the roll, is like you appeal to their boss whom are the attorney general, the Chief Justice and the DPP I don't expect receiving different decision from people of the same pillar, this is an unfair.

Recommendations and conclusion

After having a very critical analysis of the proposed bill of the Written Laws (Miscellaneous Amendment) (NO.2) Act 2021 I do hereby recommend as follows

- i. The decision of the Regional Advocate Ethics Committee be set on a status of recommendations and the same be forwarded to the National Advocate Committee for further decisions like that of the district and Regional Magistrate Ethics Committee.
- ii. The composition of the Regional Advocate Ethics Committee be re checked for the purpose of dispensing justice.
- iii. The quorum of the Regional Advocate Ethics Committee when making major decisions be re checked
- iv. The judge in charge so long as is not a member to the Regional Advocate Ethics Committee be removed in the channel of punishing advocates especially forwarding the complain to him, he already have power to do so under section 22 of the Advocate Act
- v. The powers of the National Advocate Committee be re checked especially its original jurisdiction

- vi. Public servants like the state attorney in charge be removed to form part of the Regional Advocate Committee
- vii. Judges in charge in the Zone where the High Court is situated to forward an advocate to the Regional Advocates Ethics Committee in case of any allegations.
- viii. The Advocates Committees to be structured in the face of Advocates and not government instrument
- ix. The face of the Regional Advocates Ethics Committee is like an extension to the National Advocates Committee
- x. Let organs relating to punishing of advocates be structured as independent and professional bodies and not government bodies.