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EXAMINATION OF PRACTICAL CHALLENGES AND PROCEDURAL IMPLICATIONS ENCOUNTERED BY PRIMARY COURT MAGISTRATES IN EXERCISING SENTENCING POWERS IN TANZANIA

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Abstract

This article examines the practical challenges and procedural implications encountered the primary court magistrate in exercising their sentencing powers in Tanzania. In Tanzania the Primary Courts plays an important role in the administration of criminal justice however, the exercise of their sentencing authority is subject to statutory limitations and supervisory mechanisms. The primary court pays crucial role in the administration of criminal justice because they are the courts closet to the communities and handles significant number of cases. Despite their important role the exercise of their sentencing power is subject to statutory limitations and procedural requirements including the requirement for certain sentence exceeding six months to be submitted to the District court.

Keywords: Primary Courts, sentencing powers, magistrates, confirmation.

Introduction

Sentencing represents one of the most consequential stages of criminal adjudication because it is a where the court determines the legal consequences to be imposed following a finding of criminal responsibility. It is not simply an administrative step following conviction, but a judicial process involving the application of legal rules, sentencing principles and judicial discretion. That the effective exercise of sentencing powers depends not only upon the existence of legal authority but also upon the procedures and institutional conditions through which that authority is exercised. The Magistrates' Courts Act establishes Primary Courts and confers it jurisdiction in criminal matters prescribed by law. The importance of these courts is that it constitutes an important point of access to formal justice for members of the public.

The sentencing jurisdiction of Primary Courts is however subject to statutory limitations and procedural controls. It is the statutory requirement that certain sentences imposed by Primary Courts under Section 7 of the Magistrates' Courts Act provides that a sentence of imprisonment exceeding six months imposed by a Primary Court cannot be carried into effect unless it has been

confirmed by the District Court. The same provision addresses other orders requiring confirmation.ⁱ

The process of sentencing involves the exercise of discretion and uncontrolled discretion may raise concerns relating to equality, proportionality and fairness.ⁱⁱ Before the introduction of Tanzania's 2020 sentencing guidelines sentencing was characterized by considerable judicial discretion and that the Penal Code provided relatively limited guidance concerning the exercise of that discretion.ⁱⁱⁱ Their analysis demonstrates the continuing importance of examining not only the substantive powers given to courts but also the mechanisms governing how those powers are exercised.

Despite the rationale for judicial supervision the practical operation of sentencing procedures may generate challenges for judicial officers. A distinction must therefore be made between the legal existence of a sentencing power and the practical ability to exercise that power efficiently. A magistrate may possess statutory authority to impose a particular kind of sentence while the exercise of that authority may nevertheless be accompanied by procedural requirements requiring communication, documentation, transmission of records and consideration by another court. Where these processes take considerable time or encounter institutional



difficulties, the effectiveness of the original sentencing decision may be affected.^{iv}

The issue also has implications for the convicted persons. A sentence requiring confirmation creates a period between the decision of the Primary Court and the finalization of the sentence in accordance with the statutory procedure. Section 7 of the Magistrates' Courts Act specifically regulates the position of an offender during this period including the possibility of release on bail and the manner in which imprisonment is to be calculated depending on the circumstances.^v Consequently the confirmation procedure is not merely an administrative communication between two courts it may have direct consequences for the liberty of a convicted person. The manner and speed with which the procedure operates therefore becomes relevant to the broader principles of timely justice and fair criminal process.

This gap provides the basis for examining the experiences of Primary Court magistrates and other legal practitioners who interact with the sentencing process. Such an approach is important because some procedural difficulties cannot be adequately identified through legislation and reported cases alone. The Judiciary's Handbook for Magistrates in the Primary Courts itself emphasizes the importance of proper understanding and application of the law and procedure in ensuring the effective functioning of Primary Courts. Examining the experiences of those responsible for applying these procedures can therefore provide a more practical understanding of whether the existing framework operates as intended.

Conceptual Framework

Definition of Primary Court

Primary court is defined under section 3 of the Magistrates Courts Act to mean as the lowest judicial body in the regular court hierarchy, established in every district to exercise local civil and criminal jurisdiction. Despite being the lowest in the judicial hierarchy the primary court plays an important role in the administration of justice because it's the court which members of the public access to justice. The establishment of primary court is governed by the Magistrate Court Act and defines the jurisdiction the primary court exercise the jurisdiction within the district in which it has been established subject to limitations and powers prescribed by the law.

The administration of primary court is placed under the responsibility of the magistrate with the power to control all matters relating to the primary court and was appointed by the judicial service commission where by the commission vest power to control their discipline as provided under Article 113(1) e of the Constitution of the United Republic of Tanzania.^{vi} The role of the magistrate therefore is not limited to hearing of evidence and delivering decisions it also includes ensuring that the proceedings comply with the applicable procedural and substantive requirements. The primary court possess jurisdiction in both civil and criminal matters.

Sentence

Sentence is the punishment for a crime ordered by a trial court after conviction in a criminal procedure normally at the conclusion of a trial. A sentence might consist of imprisonment, a fine, or other kind of sanction. Sentencing is one of the most important stages of criminal proceedings. After a person has been convicted the court is required to determine an appropriate lawful punishment having regard to the nature of the offence, circumstances of the offender, circumstances surrounding the trial court commission of the offence and the applicable law. In Tanzania, Primary Courts play a fundamental role in the administration of criminal justice. The Judiciary describes Primary Courts as the lowest level of courts in the judicial hierarchy, with jurisdiction over criminal matters arising within their respective districts. The sentencing jurisdiction of Primary Courts is principally regulated by the Magistrates' Courts Act particularly the Primary Courts Criminal Procedure Code contained in the Third Schedule of the Magistrate Courts Act.

Confirmation

Confirmation in legal usage refers to the act by which something that is infirm, imperfect or subject to being avoided is made firm and effective.^{vii} Further confirmation can be referred as the formal approval or the validation done by the higher court on a sentence issued by the lower court or order imposed by a lower court before that sentence or order can be put into effect it has to be done validated by the higher court. In Tanzania confirmation is particularly relevant to certain sentences imposed by primary courts. It operates as form of judicial oversight allowing the district court to examine a sentence imposed by the primary court before its execution. The Tanzania Sentencing Guidelines 2023 expressly provide that certain sentences and orders passed by primary courts cannot be carried into effect unless they have been confirmed by the district court.

The Concept of confirmation should therefore be distinguished from appeal. An appeal is a process through which a party challenges a decision of a lower court whereas confirmation is a statutory supervisory procedure through a higher court considers a particular sentence or order before it becomes effective. Under the current legal framework a Primary Court may impose imprisonment of up to twelve months in circumstances authorized by law. However an imprisonment sentence exceeding six months cannot be carried into effect unless confirmed by the District Court subject to the statutory exception relating to certain minimum sentences.

The existence of this confirmation mechanism demonstrates that sentencing by Primary Courts is not completely autonomous. The law creates a form of judicial oversight whereby the District Court examines certain sentences imposed by a Primary Court before they become effective. Such oversight may serve legitimate purposes including preventing unlawful or excessive sentences and promoting consistency. However the mechanism may also create practical and procedural difficulties for Primary Court magistrates particularly where communication with the District Court is

delayed, records are incomplete, or there is uncertainty regarding whether a particular sentence requires confirmation.

The problem is therefore not simply whether Primary Courts possess sentencing powers. Rather, it concerns how those powers operate in practice and the procedural consequences arising from the limitations placed upon them. This article accordingly examines the practical challenges and procedural implications encountered by Primary Court magistrates when exercising sentencing powers in Tanzania.

Legal Framework for the Primary court in passing of sentences

The Magistrates Courts Act^{viii} is the principal statutory foundation for the establishment and jurisdiction of the Primary Courts in Tanzania. The Act together with the Primary Courts Criminal Procedure Code in its Third Schedule establishes the framework within which Primary Courts exercise criminal jurisdiction and impose sentences to the convict. The current legal framework provides that a Primary Court may impose imprisonment for a term not exceeding twelve months, a fine not exceeding five hundred thousand shillings and corporal punishment not exceeding twelve strokes subject to other applicable laws.

However the existence of a maximum sentencing power of twelve months should not be interpreted as meaning that a Primary Court may freely impose any sentence of imprisonment between six and twelve months without further procedure. Section 7 of the Primary Courts Criminal Procedure Code provides that imprisonment exceeding six months requires confirmation by the District Court before it is carried into effect.

The Penal Code^{ix} provides the substantive criminal law framework within which sentences are issued from. It defines criminal offences and prescribes punishments applicable to different offences. The Penal Code is therefore relevant to this study because the sentencing power of a Primary Court must be exercised consistently with both the court's jurisdiction and the punishment prescribed for the offence. This requires magistrates to determine the appropriate punishment while simultaneously observing statutory limitations and sentencing principles.

The Criminal Procedure Act^x provides the broader procedural framework for criminal proceedings in Tanzania. Although Primary Courts have their own criminal procedural rules the Criminal Procedure Act remains relevant to the wider administration of criminal justice particularly concerning matters such as appeals, revision and other forms of judicial supervision.

Challenges and procedural implications facing the primary court Magistrate when passing sentences

Limited Sentencing Jurisdiction

One of the principal practical challenges facing the primary court in exercising its sentencing power is the statutory limitation placed upon the sentencing power of Primary Courts. The power of the primary court is limited to pass a sentence not exceeding six month in case it wish to pass a sentence exceeding that limit then its required to seek confirmation to the district court something which affect the exercise of its power.

Complexity of Sentencing Laws

Another challenge arises from the fact that sentencing by the primary court is governed by several legal instruments rather than by a single comprehensive statute. The primary court magistrate may need to consider the Magistrates' Courts Act, Criminal Procedure Act, the Penal Code, Minimum Sentences Act, Probation of Offenders Act and relevant sentencing guidelines. The implication for the Primary Court magistrates is that sentencing cannot safely be approached as a simple exercise of determining a punishment. It requires identification of the applicable statutory provision, determination of jurisdiction, consideration of sentencing principles and compliance with procedural requirements.

Challenges Associated with Confirmation Procedures

The requirement of District Court confirmation creates another practical difficulty. Where a Primary Court imposes imprisonment exceeding six months the sentence cannot immediately be implemented until the required confirmation has been obtained. The law therefore creates an additional procedural stage between sentencing and implementation. From the perspective of judicial administration this may result in additional communication and documentation between the Primary Court and District Court. The Primary Court must prepare and transmit the relevant records and await the decision of the District Court. The practical implication is that confirmation should not be regarded as a purely administrative formality. It can affect the liberty of the convicted person and the finality of the sentencing process.

The recommendation

Review of the Confirmation Requirement, The Judiciary and the Legislature have to review the continued necessity and operation of the requirement that imprisonment exceeding six months imposed by a Primary Court must be confirmed by the District Court. Under Rule 7 of the Primary Courts Criminal Procedure Code, imprisonment exceeding six months is subject to confirmation by the District Court. The law also provides for other orders requiring confirmation. The purpose of confirmation is to provide an additional judicial safeguard over sentences imposed by Primary Courts. However, where confirmation causes unnecessary delay, duplication of judicial work, or uncertainty for convicted persons, the procedure may require reform. The review should consider whether the existing arrangement remains appropriate in light of developments in judicial administration, sentencing guidelines, and the qualifications and responsibilities of judicial officers. Tanzania's sentencing framework has also developed through sentencing guidelines intended to structure sentencing practice.

Establishment of a Clear Time Limit for Confirmation, There should be a specific statutory time limit within which a District Court must determine an application for confirmation from the primary court. At present the legal framework provides for confirmation but does not establish a simple and clearly defined maximum period within which the confirmation process must be done. Description of a defined period would reduce uncertainty and prevent convicted persons from remaining in custody for

unnecessarily long periods while waiting for the District Court's decision. It would also encourage District Courts to treat confirmation matters as matters requiring prompt attention.

Introduction of an Efficient Electronic Confirmation System, The Judiciary should strengthen the use of digital technology in the transmission and determination of confirmation applications from the primary court to another court. Primary Courts could electronically transmit the judgment, proceedings, mitigation statement, sentencing order and other necessary documents to the District Court immediately after imposing a sentence requiring confirmation. This would reduce dependence on physical files and transportation of documents between courts. It could also allow the Primary Court to monitor whether the District Court has received and determined the application. Such a system would be particularly useful in areas where geographical distance between Primary and District Courts contributes to procedural delays.

Protection of the Rights of Convicted Persons during Confirmation, The rights and interests of the convicted persons should remain central to the confirmation process. Where a person

is sentenced to imprisonment exceeding six months the delay between sentencing and confirmation can have significant practical consequences particularly where the person remains in custody. The existing law provides mechanisms concerning bail and the commencement of sentences pending confirmation. However, courts should ensure that convicted persons are properly informed about these legal options and that the period already spent in custody is appropriately considered where the law requires it.

In conclusion this study examined the practical challenges and procedural implications encountered by Primary Court magistrates in exercising sentencing powers in Tanzania. The study has established that although Primary Courts play an important role in the administration of criminal justice the exercise of their sentencing powers is affected by a number of legal and practical challenges. In particular the requirement for confirmation of sentences exceeding six months by the District Court creates an additional procedural stage that may affect the timely implementation of sentences and the administration of justice.

ENDNOTES

ⁱ The Magistrates Court Act Cap 11 Revised Edition 2023.

ⁱⁱ ANDREW Ashworth & RORY Kelly, (2021), Sentencing and Criminal Justice, 8th edition, Hart publishing.

ⁱⁱⁱ JULIAN V Roberts & EDWARD Hoseah, (2023), Sentencing Reforming Tanzania: Moving from Uhuru to Ubuntu? Journal of African Law.

^{iv} CYRUS Tata, (2020), Sentencing: Social Process Re-thinking Research Policy, Palgrave Macmillan.

^v The Magistrate Courts Act Cap 11 Revised Edition 2023.

^{vi} The Constitution of the United Republic of Tanzania of 1977 as amended from time to time.

^{vii} HENRY Campbell, (1910), Black's Law Dictionary, 2nd edition, West Publishing CO.

^{viii} Cap 11 Revised Edition 2023.

^{ix} Cap 16 Revised Edition 2023.

^x Cap 20 Revised Edition 2023.