

SEAFARER SUBJECT GUIDE

USING LAWYERS IN TANZANIA

This Guide deals in general terms with using lawyers in Tanzania. It aims to help a seafarer understand the legal profession in Tanzania, and how to select, engage and if need be, change his lawyer. This Guide does not however constitute specific legal advice in relation to the use of any particular lawyer. If a seafarer is dissatisfied with his lawyer, he is strongly advised to consult another lawyer qualified to practice in Tanzania.

1. What is the structure of the legal profession?

- 1.1 The legal profession is fused, unlike the English profession which has barristers and solicitors. Despite the difference, the Tanzanian legal profession, like other common law systems, is fundamentally the same as its English counterpart. In Tanzania, legal practitioners are known as advocates. They are admitted to the bar and regulated by the Tanganyika Law Society and the judiciary which has powers to impose disciplinary action on advocates. The advocate is referred to as a private legal practitioner and he represents seafarers in courts (just like barristers in England), and also provides legal advice to seafarers (like solicitors in England).
- 1.2 An advocate is any person whose name has been entered onto the roll. The roll is a list of advocates kept by the registrar of the High Court in accordance with the provisions of Part II of the Advocates Act. Advocates are the only persons who are entitled to practice law generally in all the regular courts and most tribunals, and to use the title 'Advocate of the High Court'. They are also by virtue of their office, commissioners for oaths and notaries public.

2. How is the legal profession regulated?

- 2.1 The legal profession in Tanzania Mainland is regulated by the Tanganyika Law Society (the 'TLS') which is the main organisation governing lawyers in Tanzania Mainland. The TLS is a body corporate with perpetual succession and a common seal. Its major objectives include maintaining and improving standards of conduct and learning of the legal profession, as well as protecting and assisting the public in all matters touching, ancillary or incidental to, the law.
- 2.2 The legal framework that governs professional conduct, ethics and etiquette of the practice of law in Tanzania Mainland is mainly contained in the following legislation: the Advocates Act, the Tanganyika Law Society Act, the Advocates (Remuneration

SEAFARER SUBJECT GUIDE

and Taxation of Costs) Rules, the Advocates (Disciplinary and Other Proceedings) Rules, the Advocates (Accounts) Regulations, Notaries Public and Commissioners for Oaths Act, and the Rules of Professional conduct and Etiquette of the Tanganyika Law Society.

- 2.3 The Advocates Act is the principal legislation and it is concerned more with matters of a general nature and importance. It provides, among other things, for the establishment of the Advocates Committee, which is the main disciplinary body for the profession. The Advocates Act sets down the procedure under which disciplinary action against an advocate may be conducted. It also creates certain prohibitions against such acts as touting and unlawful solicitation of business.

3. How can a seafarer find a lawyer?

- 3.1 Tanzania's pattern of distribution of legal services is largely disproportionate. It has one of the lowest numbers of legal practitioners per capita in the world. Most legal practitioners are concentrated in Dar es Salaam, the capital city.
- 3.2 There are no particular guidelines for choosing a lawyer. A seafarer should ask for the best-known lawyer in the country specialising in the area of law with which the seafarer is concerned. Inherent in the practice of law is the condition that service will be offered to any seafarer, irrespective of who or what he is, so long as he is willing and able to pay the appropriate fee.
- 3.3 If a seafarer has a claim or problem arising from his employment on board his ship concerning, for example, recruitment, working hours and conditions or claims against his employer for unpaid wages, he should consider consulting a law firm or lawyer conversant with maritime law. Not many lawyers in Tanzania are experts in maritime law. Many of the seafarer's rights in Tanzania are contained in the Merchant Shipping Act and not in general employment law. Criminal lawyers should be retained where there are criminal offences committed.
- 3.4 If the seafarer has a claim for personal injury or death resulting from work, he should appoint a specialist in personal injury claims who will advise on legal remedies that the seafarers may be able to recover as damages. The lawyer should be an expert in civil litigation with regard to employment disputes, but if possible also have knowledge of maritime law.

SEAFARER SUBJECT GUIDE

3.5 Employees and employers may join and form trade unions and employers' associations respectively. Through the trade unions and the employers' associations, seafarers and ship owners are able to obtain recommendations as to suitable lawyers. The union or association may also appoint a lawyer on behalf of the seafarer or shipowner if requested. The seafarer should ensure that there is no conflict of interest as between the lawyer appointed, the shipowner and the seafarer.

4. On what terms should a seafarer engage a lawyer?

4.1 There is no law that specifically provides for the manner in which a lawyer receives instructions. However, the TLS Rules of Etiquette provide for the manner in which lawyers are to handle seafarer's information, files, and documents obtained from the seafarer. Under the Rules of Etiquette and the Advocates' (Accounts) Regulations, advocates are required to maintain a seafarer client's accounts. A seafarer client account is also to be maintained by the lawyer. The seafarer's money should not be used for purposes other than the intended use. Misappropriation of the funds of a seafarer is an example of misconduct under the Rules of Etiquette.

5. How will a seafarer be charged fees by his lawyer?

5.1 Lawyer's fees or remuneration are charged depending on the matter and value in question, workload and complexity of the matter, and the amount of time the lawyer spends on it. The lawyer may also agree with the seafarer on the fee payable. A lawyer will also charge the seafarer for any disbursements he incurs on behalf of the seafarer, such as court fees.

5.2 There are two methodologies which are used in charging fees: the retainer arrangement, and the case to case basis. The retainer arrangement is a system in which a seafarer enters into an agreement with his lawyer for a flat fee to represent him on a monthly or yearly basis. The services provided are typically advice on minor issues or in a minor case.

5.3 The case to case basis is an arrangement which is governed by the rules provided under the Advocates Remuneration Rules of 1991 (<http://www.tls.or.tz/pdf/Remuneration.pdf>) (link in English) in which the lawyer can charge the seafarer an agreed rate ranging from 1% to 10% of the value of the subject matter. Furthermore, on the issue of case to case basis, the parties can also ignore these rules and agree on a flat fee since the relationship between a lawyer

SEAFARER SUBJECT GUIDE

and his client is a contractual one and can be controlled by the Laws of Contract. This is usually the case when the nature of the matter does not fall under the Rules.

- 5.4 Lawyers are prohibited from charging fees and remuneration which are lower than that set out in the Remuneration Rules. They are also prohibited from charging seafarers over and above the required amounts. Lawyers are also not allowed to charge seafarers contingency fees, where they charge upon the results of litigation either in terms of the success or failure of the case or of a share in the award to be granted.

6. Can a seafarer get legal aid in a criminal case?

- 6.1 Any person accused in any criminal court other than Primary Courts may, as of right, be defended by an advocate of the High Court as provided under section 310 of the Criminal Procedure Act. This is permissive legal aid.
- 6.2 Any seafarer who is charged with an offence for which he, if convicted, would be sentenced to life imprisonment or death, is entitled to have legal representation. If the seafarer is not capable of hiring an advocate to represent him, the Chief Justice has a discretion to certify that the seafarer should be provided with legal aid in the conduct of his defence or appeal. According to section 3 of the Legal Aid in Criminal Proceedings Act the test is whether it is desirable, in the interest of justice, and if the seafarer is of insufficient means to obtain legal representation. At this instance, the judiciary, if it is practicable, may assign to the seafarer an advocate for the purpose of representing the seafarer.
- 6.3 The test applied under the Legal Aid in Criminal Proceedings Act is that a person should not stand alone without legal representation when he is about to face long term imprisonment or death. The appointment authority in this case is the Registrar of the High Court. For a Tanzanian seafarer, all the offences of this nature are forwarded to the Registrar who appoints legal counsel to perform such duties. For foreign seafarers, the embassies or high commissions of the seafarers should liaise with the foreign affairs ministry in Tanzania who will liaise with the respective countries so that this free service is given to the seafarer.

7. Can a seafarer get legal aid in a civil case?

- 7.1 There is no right to legal aid in civil cases. Any legal aid that is available is provided through accredited and non accredited organizations such as the Tanganyika Law

SEAFARER SUBJECT GUIDE

Society ('TLS') and Legal Aid and Human Rights Centre ('LHRC'). These organizations have their own criteria and qualifications for a seafarer to be eligible for legal aid, usually based on the seafarers' financial resources.

8. Can a seafarer get any other free legal advice?

- 8.1 A seafarer may be able to obtain free legal advice from an advocate carrying out pro bono legal services as a requirement for members of the TLS or as a way of helping the community. Also some limited legal advice is available on the websites of private law firms.
- 8.2 In relation to the unpaid wages of seafarers, section 132 of the Merchant Shipping Act allows the master and the seafarers to refer a dispute to the Registrar of Seafarers for settlement, and the awards therein become conclusive as between the parties.
- 8.3 The referral of dispute to the Register of Seafarers for settlement is a service that a seafarer can invoke free of charge if he has managed to obtain a legal aid service under the Legal Aid in Criminal Matters Act if his embassy or high commission has liaised with his country, through foreign affairs ministry for assistance.

9. Can a seafarer sue his lawyer?

- 9.1 A seafarer can sue his advocate in a court of law because the engagement between an advocate and a seafarer is in the nature of a contract, governed by the Law of Contract Act. Therefore, the seafarer may sue his advocate on the contract.

10. How can a seafarer complain about his lawyer?

- 10.1 There are two main bodies charged with the task of overseeing the disciplinary aspects of the private legal profession in Tanzania: the Tanganyika Law Society Ethics Committee, the Advocates Committee and the Judiciary.
- 10.2 Complaints against an advocate are made to the advocates committee through the secretary of the committee in a prescribed form provided under the Advocates (Disciplinary) Rules supported by an affidavit. It is important to note that any person can complain against an advocate to the Advocates Committee either directly or through the secretariat of the TLS.

SEAFARER SUBJECT GUIDE

10.3 The Advocates Committee has powers to suspend the advocates after a due hearing has been provided to both parties in the proceedings. The Tanganyika Law Society Ethics Committee has the role of hearing the complaints and advising the party to take further steps such as filing a case against the advocate or referring the matter to the Advocates Committee.

11. How can a seafarer change his lawyer?

11.1. There are no prescribed rules and conditions on changing advocates. Unless provided otherwise in the advocate-seafarer contract, the seafarer can at any time write to his advocate, withdrawing his instructions and appointing another advocate.

11.2. The seafarer should be aware that changing his advocate could result in a delay and additional expenses, since the new engaged advocate will need to understand the documents and the case.

12. Is a foreign seafarer treated differently?

12.1 A Tanzanian court must have territorial jurisdiction to deal with a claim of a seafarer. For foreign seafarers, the court will have jurisdiction if their vessel is lying or passing off the coast of the sea in the area over which the court has jurisdiction. However, there are backlogs of cases which will result in delays.

12.2 The official language of the courts in Tanzania (except for the primary courts), is English. For seafarers not using English, the court shall have to seek an interpreter. This is an obstacle which foreign seafarers may have to face.

12.3 A foreign seafarer who is a claimant and who does not reside in Tanzania and does not have sufficient immovable properties within Tanzania shall be required at any stage of the suit to give security for costs likely to be incurred by the defendant in defending a claim.

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