

**LAWYERING FOR LAWYERS:
A DISCOURSE ON THE RULES ON ETHICAL
CONDUCT AND ETIQUETTE**

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“Virtue down the middle” said the Devil, as he sat down between two lawyers ”¹

“We lawyers must alter our prime axiom-that we are mercenaries available indefinitely for any cause or purpose a client is ready to finance....we would have to reconsider and revise a system of loyalty to clients that results too often in cover-ups, fraud, and injury to innocent people... ”²

1.0 Introduction

Legal practice has had a bad name since a long time ago. But like many other professions, there are rules of professional ethics which have existed since when legal practice came into being. All that notwithstanding, the hue and cry from the members of the public generally, and the litigants in particular, against lawyers, has been on the rise. Why is the situation like it is today? This paper seeks to answer the following questions:

- i) Are the rules known to all those who should know them?
- ii) If not, why?
- iii) Perhaps they are known, then why are they violated?
- iv) Are they lacking in substance or in any material respect?

Ethics create or impose special duties and responsibilities that arise out of a lawyer’s relationship with his clients, his opponents inside and outside the court room, and as officers of the court, a relationship with the courts, government authorities, his lawyer colleagues, the legal profession and the society generally. It is therefore pertinent that amidst the disenchantment from the public, we should take a critical look at the way we conduct ourselves in the execution of our professional responsibilities.

2.0 Ethics

“Ethics” has been defined as the rules of behaviour pertaining to a particular class of human action. They relate to moral principles that control, influence or guide a person’s conduct or behaviour so as to gain respect for him/herself.³

Legal Ethics, on the other hand, is an area of ethics which involves the legal profession and the practice of law. Adherence to the basic legal ethics is generally required of all those who practice law.

Legal ethics therefore, focuses on the following, among others.

¹ Danish Proverb.

² Elizabeth Frost-Knap man and David S. Shragger(1998): The Quotable Lawyer, Revised Edn,Universal Law Publishing Company, New Delhi

³ Ndika, Dr. G .(2006): Judicial Ethics in Tanzania: A Paper presented at a Primary Courts’ Magistrates’ Seminar, IJA, Lushoto,

- The Lawyer-client relationship
- Duties of a lawyer as an Advocate in adversary proceedings
- Lawyers' dealing with others who are not lawyers
- Dealing with persons who are not clients
- Dealing with law firms and associations
- Dealing with the Public service
- Advertisement
- Integrity of the profession
- Respect of the client's confidences, candour towards the tribunal
- Truthfulness in statements towards others
- Professional independence⁴

3.0 Rules Regulating Conduct

Whereas the issue of moral conduct is a personal matter, there is an array of legislative instruments that are intended to regulate professional conduct. There are principle as well as subsidiary legislations. These include the following:

- i) The Advocates' Act, Cap.341 RE 2002
- ii) The Tanganyika Law Society Act, Cap.307 RE 2002
- iii) The Advocates' (Admission and Practicing Certificates) Regulations, GN No.121/55 and 92/75(made under s.69)
- iv) The Advocates (Disciplinary and other Proceedings) Rules, GN No.135/55(made under s.14)
- iv) The Advocates (Accounts) Regulations, GN No.207/69(made under s.69)
- vii) The Advocates (Professional Requirements) Regulations. GN No. 395/63 (made under s.69)
- viii) The Advocates Act (The Application of s.3 of the TLC) Order GN No.154/71(made under s.3 (2))
- ix) The Advocates (Remuneration and Taxation of Costs) Rules, GN No.

There are also rules of Professional Conduct and Etiquette of the TLS, which, however, are not justifiable in Courts, since the TLS is not mandated to make subsidiary legislation. The Advocates' conduct and etiquette refer to the set of moral principles that control, guide or

⁴ Chin, G & Wells, S (1999): "*Can a Reasonable Doubt have an Unreasonable Price? Limitations on Attorney's Fees in Criminal Cases*" Vol.1 Boston College Law Review, Boston.

influence the conduct of an individual which focus on the protection of the legal profession by promoting confidence among the clients who expect legal services.

The TLS also has Ethics Committees both, at the Chapter and National levels. These committees are enjoined to receive and deal with complaints against errant Advocates.

4.0 Principles for the Enforcement of the Code of Conduct:

Upon being admitted to the Bar, every lawyer becomes, without election, a member of the Tanganyika Law Society⁵. By necessary implication therefore, all Advocates are deemed to undertake to be bound by the code of conduct. There are thus a number of ways in which this code is enforced.

Under the Advocates' Act, Judges are empowered to deal with Advocates who violate the rules on ethics. The powers include admonishment and or suspension. An Advocate aggrieved by such action of a single judge may refer the matter to the Advocates' Committee⁶ or where the decision is by the Chief Justice, to the Court of Appeal⁷

The Rules of Professional Conduct and Etiquette of the Tanganyika Law Society lay a set of moral principles that control, influence or guide the conduct and behaviour of Advocates. The rules enjoin the Advocates to enforce the law and observe a high standard of conduct which will lead to the integrity and respect for the Advocates. Advocates should adhere to, and practice law, by maintaining the values of their profession. Hon. Ngwala, A.F, has emphasized the need for adherence to ethics. She said:

*"...justice is administered according to the law based upon clear principles or values. In other words, Advocates should therefore participate in establishing, maintaining, enforcing at all times, in observing high standards of conduct, so that the integrity and respect for themselves and for the independence of the judiciary is preserved."*⁸

Advocates practice in Courts. If they are not respected, the Courts where they practice can not be respected either, and that spells doom for the judicial system. It is therefore for us to look at the rules of conduct regulating legal practice.

4.1. Champerty

⁵ Under S. 7(1) Tanganyika Law Society Act, Cap.307, R.E 2002. This provision has been challenged in a Constitutional Court as being violative of the Right of Association in *Misc. Civil No. 85/2005 Zephine Nyalugenda Galeeba & Another vs The A.G & Others*

⁶ Under S.22(2)©(1)

⁷ Under s. 22(2)©(2)

⁸ Ngwala, A.F(2006) *Ethics for Judicial Officers*: Presented to Primary Court Magistrates, IJA, Lushoto

This is an arrangement between an Advocate and his/her client where the Advocate takes a case without being paid, it being agreed that he/she will be paid at the end of the case⁹. This arrangement is ethically prohibited because in that case, the Advocate creates an interest in the matter and steps into the shoes of his client. The client does not know the extent of his liability as it will depend on the outcome of the case. This is a conservative reason given against champerty. There has been argument that with our responsibility to society, which includes assisting the indigent, should we allow an indigent to lose his/her rights because he/she does not have instruction fees? Would not an agreement under seal suffice to enable the litigant to know the extent of his/her liability and the rights of the Advocate?

4.2. Touting/ Ambulance Chasing

This is the use of intermediaries to bring or attract clients to an Advocate. This can be made by telling lies, with a promise to reduce the instruction fees, promising victory on the matter for the purpose of only winning the Client's interests.¹⁰

S.47 of the Advocates' Act provides as follows:

“Any person who, on behalf of any Advocate, or for his own account, acts as a tout shall be liable to a fine not exceeding one thousand shillings and to imprisonment for a term not exceeding six months”¹¹

S.48 provides for the offence and penalty for inducing clients to abandon their Advocate as follows:

“any person who induces, or attempts to induce any client, or prospective Client of any Advocate to cease to be the client of such Advocate in order to become the client of the Advocate whom such person serves as secretary, clerk or messenger, or in any capacity, shall be guilty liable to a fine not exceeding one thousand shillings and to imprisonment for a term not exceeding six months”.

These two provisions have two interesting features. One is that they impose both a fine and a term of imprisonment. The second is that both such fines and imprisonment, while they may have been a manifestation of the seriousness with which the code of ethics was held then, they

⁹ Hon. Fauz, Dr. T. (2006). *“The Bench, The Bar and the Concern for Truth”* in William Binchy & Catherine Finnegan (eds). p.303

¹⁰ In Kenya, though, touting or ambulance chasing is no longer considered unethical. It is quite common practice for Advocates to have their “officers” at the scene of an accident and even in hospital, in a complete show of altruism, try to convince the accident victims to become their clients. In that event, the Advocate pays even their medical bills and then at the end of the day, approaches the insurance companies, threatening legal reprisals if no settlement is made.

¹¹ In Tanzania, this is prohibited. Under S.46 (1) & (2), the Chief Justice may make an order excluding any person from the precincts of the court.

are at present, outrageously lenient, and appearing to defeat the whole purpose of their being. Nonetheless, it is the law, at least for the time being.

4.3 Principle Against Coaching Witnesses

Every Advocate is enjoined to transact his business with skill and diligence, to both his clients and to the Court¹². Advocates are officers of the Court. Their duty as such officers is to balance the interests of their clients and their responsibility as such officers to the Court. Therefore, the rules of ethics prohibit the coaching of witnesses. Coaching however, is not the same as reminding the witness about his true defence against the charges he/she faces. Coaching in this sense is to “coach” the witness to fabricate evidence, knowing it to be false. In a word, “teaching” them to tell lies in Court¹³ Rather than parading a client to deceive the court, it is advisable to drop that client, no matter how much s/he is willing to pay!

4.4 Conflict of Interest

A person who has an interest in a matter cannot handle it properly or even professionally, and the rules require that where such Advocate has interest in the matter, he/she should disqualify him/herself from the conduct of the matter. For example, an Advocate who witnesses a sale agreement, if the parties disagree on its provisions, such person cannot become an Advocate of one of the parties. He/she becomes just a witness.

Another area where there is conflict of interest is where an Advocate has been a representative of a client, and in the process he/she has gained a lot of information which, but for his/her being such Advocate, he/she would not have received.

In societies that are highly developed, and where lawyers deal with a lot of different clients, it has been argued that conflict of interest is unavoidable, and that we should only strive to manage it.¹⁴

4.5 Principle against “Under-cutting”

This is the practice of under charging. The remuneration of Advocates is provided for under the Advocates (Remuneration and Taxation of Costs) Rules, GN. 515/91. The rules prescribe the scale fees chargeable by an Advocate. The rules of etiquette militate against the charging which is below the prescribed scale. It is quite common that due the increase in the number of Advocates, and most of them being concentrated in towns, the charging of fees according to scale is becoming a dream-pipe. The altruist among them contend that since the majority of those who seek legal help are the marginalized, prescribing a minimum fee chargeable is tantamount to denying them such a needy service.

¹² *Akena Adoko vs. Advocates’ Committee(1982) TLR 290*

¹³ Under S.102(2) of the Penal Code, Cap.16 R.E 2002, coaching of a witness is known as subornation of a witness, and upon conviction, the accused is liable to a jail term of upwards of 7 years(S.104)

¹⁴ See: Griffiths, J(2002): “*Serving Two Masters: Managing Conflict of Interest in the Modern Law Firm*”

On the other hand, there are those who say that prescribing what a lawyer should charge is also unconstitutional, and have asked the court to scrap the rule altogether!¹⁵

It is an undeniable fact that the majority of Tanzanians have no means to hire lawyers. The members of the TLS have a responsibility to society, which justifies the holding of a Legal Aid Day¹⁶. Some of the citizenry, who appear, are those who were turned away from the Advocates' doors, for want of sufficient fees, the latter apprehensive of violating the rule against under-cutting!

While that is continuing, on the other hand there are those who have not waited for the decision in the *Galeeba* case. They have set their own charges, at times reaching astronomical proportions. If you can not afford their services, just look elsewhere and the concerned law firms have no qualms about it¹⁷.

4.6 Duty to be Honest

The dishonesty with which Advocates have been associated has variously turned them into "punching bags" by the members of the public. Dishonesty appears to be the rule, rather than an exception in a lawyer's daily undertaking. It is not uncommon to have complaints in the Advocates' Committee against Advocates who have misappropriated Clients' monies. Under the Advocates (Accounts) Regulations¹⁸, Advocates are required to maintain a Clients' Account, so as to distinguish the money received for or on behalf of his/her Clients and the money he/she receives as payment for legal services rendered.

The truth however, is that this rule, like many others, is violated with abandon, leading to the misappropriation. Elsewhere, failure to keep such an Account is deemed to be a gross violation of professional ethics.¹⁹ In a judgement against an Advocate who had converted his client's money to his own use, the House of Lords in *Re Corbett*²⁰ stated:

"We should be guilty of a very gross dereliction of duty if, by replacing this man on the roll of Attorneys, we were to put him in a position to exercise his talents in the possible detriment of the public"

With the profoundest respect to the TLS, we have not dealt with this crime

¹⁵ In the case of *Z.N Galeeba*. See fn.5(supra)

¹⁶ Under S.4(e) of the Tanganyika Law Society Act, one of the objects of the TLS is to "protect and assist the public in Tanzania in all matters touching, ancillary or incidental to the law"

¹⁷ Gabriel Chin & Scott Wells (1999)(supra) fn.4

¹⁸ G.N No. 207/1956. R.2 requires every Advocate to maintain a Clients' Account.

¹⁹ See: Halsbury's Laws of England, Vol.XXXVI, para.360

²⁰ (1956) 139 E.R 1425

adequately, to our common and joint shame.

As earlier stated, an Advocate owes a duty to his client upon being engaged. But this service to the client sometimes has been taken to absurd heights, with or without the connivance of clients. Some Advocates have assisted in preparing false affidavits. In the case of *Magu District Council & another vs. Mhande Nkwabi*²¹, an Advocate of considerable experience, made an application to lodge a notice of appeal out of time. The application was accompanied by a decree which he had himself prepared. In the decree and the attendant application, the Advocate, to his knowledge, deliberately included the name of a person who was not a party in the proceedings he sought to impugn. Mrema, J was particularly disturbed by this conduct when he said:

*“I am particularly concerned with a copy of the decree, which the learned Advocate attached to his affidavit as Annexure “B” ...Having acted for the Defendant in the District Court, there is no doubt therefore that he knew who the parties were in the original suit, hence any appeal lay against any of them. But it appears absurd, if not unbecoming of professional ethics on the part of the same learned Counsel to go ahead to (sic!) draw a decree on which he callously dragged in one L.M.Ndaki, the purported second applicant, as one of the applicants/judgement debtors...the decree and also the proposed petition of appeal are nothing but improper, if not fake documents....”*²² (Emphasis supplied)

In the Ugandan case of *Re Ssessanga*²³, the then East African Court expressed in no uncertain terms, the gravity of an Advocate swearing a false affidavit. It said:

“.....so grave an act, cannot be adequately dealt with merely by suspending his right to practice. I consider him to be utterly unfitted to practice at the (Ugandan Bar)

In our own backyard, an Advocate *Martin Shinganya (r.i.p)* in the case against the Advocates’ Committee²⁴, was only suspended for a year from 17th July 1989 to 17th July 1990.

The responsibility of Advocates to be honest can not be over emphasized. In a conduct that is related to ambulance chasing or “coaching”, there has evolved a number of Advocates who present themselves as “experts” in the execution of decrees. An Advocate may toil with his clients (usually indigent ones) for several years, but when eventually a decree is obtained, you do not see the clients, it would appear as if they have abandoned their case, only to learn that Advocate so and so was in the middle, or has completed the execution

²¹ (1997) TLR 286(Civil Application No.3/1997)

²² Unfortunately, the report does not show in which capacity could have Counsel joined the 2nd applicant. It is not clear whether he was a debtor to the Council and therefore he was joined for purposes of indemnification, or whether he was a person in authority in the said District Council. But even if it was, he ought to have been joined at the trial Court!

²³ (1969) E.A 345

²⁴ No.1/89.

process. Normally with such antics, the Advocates would connive with the cleverest of the decree holders to swindle them their lawfully earned payments.²⁵

On yet another hand, because our law of civil procedure allows it, some lawyers are also “experts” in exploiting the skewed provisions, to make execution almost impossible. It is common knowledge that now execution is more complicated than the trial itself.²⁶ This conduct has been blessed by the Courts²⁷, leading to despair both to Counsels and to the decree holders.

4.7 Principle of Exclusion

Rule 5(3) of the Rules of Professional Conduct and Etiquette of the TLS prohibits Advocates from forming partnerships with persons who are not lawyers.

The rule provides:

“No Advocate may agree to share with any person not being an Advocate or other duly qualified legal agent practicing in another country his profit costs in respect of any business, whether contentious or non-contentious”

As noted before, these rules are not justiciable in Courts of law. So the above provision has not been tested in Court. However, it would appear to me that for whatever reason that it was considered, it is currently out of place. At their promulgation, it is possible that the Advocates were trying to protect themselves. But Advocates in a corporate world engage in businesses that call for multidisciplinary expertise. For example, an Advocate may be engaged to advise a corporate client on a plan to acquire a company that has been put up for divestiture. This involves doing what is called “Due Diligence”, an examination of the true state of the said company. It involves so many aspects, including, but not limited to, expertise in labour matters, accounts, taxation, and so many other areas. Why can’t a law firm have such departments, in which the partners may not necessarily be lawyers? Won’t they be entitled to payment after participating in the exercise?

Nowadays some law firms have got business managers and some have Public Relations Managers. All these are very important to the growth of the firm.

I am of the view that if a non-lawyer can contribute positively to the growth of the business, it is not proper to have rules prohibiting such person being recruited as a Partner.

4.8 Rules on Decorum

²⁵ These cases are many, but the prominent one involved the case of the former employees of Tanzania Breweries Ltd, which led to the suspension of some Advocates. In a case involving the author, he was lucky enough to get wind of the shifting of his clients from him to another Advocate!

²⁶ The case of *Devram P. Vallambhia vs. Transport Equipment Ltd* is a case in point. Having had a decree of the Court of Appeal worth billions of shillings for more than 15 years, Vallambhia died a pauper!

²⁷ The frequent shifting of Magistrates and Judges from one station to another has added to the impasse.

There is a way in which Advocates represent themselves, and are judged as much as possible on the extent to which they hold themselves out and inside the courtroom.

4.8.1 Ability to communicate

There is a language that the lawyers use. They have been accused of clinging to obsolete and archaic language that tends to confuse the people. While I do not subscribe to this criticism, (this being a profession, say like medicine), I would not, for the purpose of this discourse, belabour that point. For the purpose of this paper, I would regard it as a duty of an Advocate to use a language that is proper, and which does not confuse anybody, in its text and in the meaning.

Where English is to be used, it must be proper English, and not its distant cousin. Even when proper language is used, it must be lawful, and respectful. Lawyers do not call each other names, because there is nothing to argue about, either on the facts or in law. How to address a Magistrate or Judge is also important. Magistrates are addressed as “Your Honour” and Judges are “My Lord/Madame Judge.” And these ladies and gentlemen know the laws very well, so they normally “err”, even if you feel that even a first year law student would have decided in your favour, do not express disapproval of the decision. The only legal remedy that is known is to prepare an appeal immediately.

It is true that some lawyers’ pleadings may be abhorrent. You get convinced that this person is lacking, either in the language or in the knowledge of the law. Still, the rules of etiquette require you to address such Advocate as “learned friend”, even if you are convinced that he/she is neither learned, nor is he/she friendly! Disparaging, and or questioning your fellow Advocate’s competence at any stage of the trial is highly unethical!

While in Court, Advocates are enjoined to be open, to communicate clearly and effectively in a plain language of the court.²⁸ Do not exhibit verbosity which does not at all help your client. It is highly unethical to use a loud voice to impress your client, and nowadays, the press, while arguing nothing in particular. If you argue until you start sweating, look at the judge. If he is not recording what you are saying, drop that line of argument. Do not demand that your submissions should be recorded!

4.8.2 Independence

Some lawyers get carried away by the interests of their clients, so much so that they act like their servants. Some clients in the process command, more or less, their clients to violate professional ethics. They should not be distracted by jarred interests.²⁹ They must be impartial in the pursuit of justice, without jeopardizing their clients’ interests. This was stressed by Lord Denning when he said:

²⁸ Ngwala, A.F(supra) fn.8

²⁹ Di Bona, A J: *The Judges’ Book*. p.304

“Yes, he (Advocate) must keep his vision unclouded. It is all very well to paint justice blind, but he (the Advocate) does better without a bandage around his eyes. He should be blind indeed to favour or prejudice, but clear to see which way lies the truth.”³⁰

When you get emotionally involved in case, you sometimes get pushed around by clients, particularly rich ones, and in the process you find at some points losing not only your head, but your otherwise good case. Chipeta cautions against this conduct. He writes:

“Do not lose your head if you think the case is an important one, or influential people are involved in it”³¹

4.8.3 Humility

I find it an essential ingredient for legal practitioners to be humble. By this, I do not mean that they are expected to take blows while lying down, but for the purpose of this discourse, I mean that Advocates should admit the things they do not know, and be prepared to learn them. An Advocate may plead a law or may cite a case that has been over-ruled or repealed. It is a perfectly accepted norm to concede to such new revelations. And lawyers are expected to learn, and to accept to be corrected where they go wrong. On this score, Lord Denning further gives counsel when he writes:

“The law is a science which requires long study and experience before a man attains proficiency in it, and the ordinary citizen cannot properly put his arguments before the judge except with the assistance of a trained lawyer”³²

Advocates should strive to learn new innovations in the law itself, and in the modern technological advancement that will ease his/her understanding of the law. It is terribly unethical for a lawyer to represent himself to the clients as a person competent in all fields of law, and upon being paid handsomely, gets to lose a case on a mere technicality.

4.8.4 Preparedness

An Advocate should at all times when representing a client, be prepared for appearance in court. He should know what stage the case has reached, and if it is for hearing, he/she should have his/her clients prepared with all the documentary evidence that are to be relied upon. The rules on etiquette require an Advocate to represent his clients skillfully and diligently.³³ Cases get adjourned because Counsels are not prepared, to the embarrassment

³⁰ Lord Denning: *The Due Process of the Law*” p.60

³¹ Chipeta, B.D (1986). *A Magistrates’ Manual*, TMP Books, Tabora. p.244.

Also see: Hazard, G & Dondi, A (2004); *Legal Ethics: Independence from Clients*. Stanford University Press, Stanford. P.158

³² Lord Denning: *The Road to Justice*

³³ Rule 37

both of the Court and the litigants. It should be borne in mind, however, that the court has discretion to refuse adjournment. When it comes to that, the client would have been “short-changed”³⁴

One of the main reasons for failure to prepare is drunkenness on the eve of the case. Advocates emitting fumes in the early hours of the morning are a common site in the corridors of the courts, with the clients following meekly behind, consoling themselves that our lawyer performs best when he has taken “something”. He may seek for adjournment in a language they may not understand, thus escaping their wrath on that day. It becomes very embarrassing when the client is educated and suspects that the adjournment was because his lawyer was “tired” that morning!

4.8.5 Attire for the members of the Bar

Members of the Bar boost their image in the way they dress, both inside and outside the courtroom. Other professions and occupations have also embraced attire as a requirement for their professional ethics. These include employees of T.R.A and the Banks. A number of other private companies insist on their members being smart. The outlook of the Advocates reflects the esteem of their offices. While a dark suit and a tie or bib, if it is in the High Court, members of the Bar should invest considerably in the way they appear even after official engagements. For any reason they should not appear shabby in dress and in manner, any where.

4.8.6 The Principle of Precedence of Advocates

Legal practice worldwide recognizes the principle of Advocates’ precedence. The TLS Act provides for this recognition. It provides:

*“The Registrar shall enter upon the Roll the name of every person who is qualified to practice as an Advocate in Tanzania, and the order of entry of such names shall be according to the precedence of such persons as between themselves”*³⁵

Irrespective of his or her age, upon appointment, the person holding the office of Attorney General shall take precedence over all other Advocates.³⁶ In Advocates’ speak, he is Advocate No.1.

The purpose of this recognition was to accord respect for older practitioners to take precedence in appearance before the courts and in all other events in which Advocates take part *qua* Advocates. It must be mentioned here that the precedence being referred to here is

³⁴ *Felix Tumbo vs. TTCL & another (1997) TLR 57*. An Advocate who was fully instructed to appeal failed to do so on time that the time for lodgement of the appeal expired. Luckily the Appellant was granted extension of time.

³⁵ Section 7

³⁶ Section 8

with respect to the date of admission on the roll, and does not make reference to age, or when one graduated from law school.

However, in spite of all this, precedence is not observed, in particular with appearances before Judges and Magistrates. Most Judges and Magistrates prefer to begin with matters that are set for mention, even if these are conducted by the junior most Advocate. While this may be good practice, it would still be better if the court schedules are such that every Advocate is allocated the time when to appear. Those with cases for hearing should not be made to wait in the corridors for hours.

4.8.7 Rule against Familiarities with Judicial Officers

It is a canon of law that in the execution of their duties, judicial officers must be as independent as possible. This is necessary to observe the independence of the judiciary, a condition precedent for the rule of law. As such, Advocates and their Clients should desist from establishing unusual familiarities with judicial officers who have conducted their cases. I am not, however, suggesting that there should be bad chemistry between Advocates and Judicial officers. These are all officers of the Court. However, the way we are engaged as such judicial officers, we advocating and they adjudicating, makes it imperative that there are times when we have to refrain from being too familiar, in a way that would compromise the independence of the judicial officer before whom we may have a matter pending.

5.0 Corrupt Practices

Corruption has been held as a great enemy of justice³⁷. The delay of disposal of cases, outright denial of justice, coupled with the very technical rules of procedure is blamed on corruption. At the behest of Advocates, some Magistrates are known to write several judgements. Corruption has become one of the major in-roads to quality justice delivery, and without curbing the improper judicial behaviour among the Advocates, corruption will continue to eat into our legal system, and the courts, rather than being the citadels of justice, will become its grave.

Corruption is behaviour that should be avoided, for it blinds the eye of the wise and twists the words even of the just. It is a deadly enemy of justice. It (corruption) can take many forms. It may be corruption through money, property, or promotion or even sex³⁸

Way back in 1996, retired Prime Minister J.S Warioba headed a Presidential Commission which released a report with the following scathing words:

³⁷ TANU Creed”*Rushwa ni Adui wa Haki. Sitatoa wala kupokea rushwa*”

³⁸ Di Bona, A.J (supra)

Also Chipeta, B.D (supra)

“Within the legal profession in Tanzania, corruption has reached endemic proportions. It poses a remarkable threat to the rule of law, as well as to the independence of the judiciary. Corruption is a conduct or practice that can flagrantly be done by any person being a civilian or an official, including an Advocate. This leads to the violation of the existing rules, regulations, procedures and laws for the purpose of realization of personal or group gains or benefits. This must be urged to stop for the betterment of the judicial system and the public.”³⁹

In spite of the above warning, corruption has not, but increased, consigning further into oblivion the hopes and aspirations of the less fortunate members of our society. Corruption draws a wedge between the “haves” and the “have nots”. The wedge is facilitated by some of our unscrupulous colleagues. The bigger the divide, the more the violation of rights. Those deserving conviction are set free, those who ought to be set free are convicted. There is chaos in court registries, as those Advocates who can pay the “facilitation fee” are the ones who get “assistance”

We are sometimes engaged for “watching brief” for our rich clients for cases they fabricated against their domestic workers, whose only crime was to ask for their unpaid salaries. Our responsibility is to make sure the employee is first taken to court, denied bail and eventually gets sent to jail. We then get paid handsomely, for facilitating the burying of justice. In these circumstances, how do we facilitate the rule of law?

Alfred Di Bona laments:

“A lost nation is not one that lacks a ruler, but one that lacks the rule of law. Distortion of law does not mean that there is no law. It means there is law, but it is not applied. Thus it is as if there is no law”⁴⁰

But we have been trained and chose this profession to be able to apply the law *qua* law. Again, the unmitigated blame on the Advocates’ failure to apply the law positively and instead to distort it, is unfortunate.

6.0 Conclusion

This paper is but a contribution to the dissemination on the need to abide by the legal/professional ethics by Advocates. It does not profess to be exhaustive on the matter.

I have shown that since every lawyer upon enrolment becomes an Advocate member of the TLS, he/she has no choice but to strive to know the rules of etiquette and conduct and to adhere thereto. The rules are many. I have highlighted on most of them. I have pointed out those I think are obsolete and behind times. There is an urgent need to look into them.

³⁹ Report of the Presidential Commission of Inquiry Against Corruption, (The Warioba Report) 1966. Government Printer. The report is said to have been kept into safety in the Government shelves.

⁴⁰ Di Bona, A.J (supra) fn.36

I have tried to argue that most offensive professional misconducts are still treated under the rules that have now become outdated, which require a review to march with the modern times.

For want of time, I have not been able to show by statistics how much corruption has impeded the rule of law with the help of Advocates. I argue that inspite of that, there is an outcry against lawyers acting as fetters, rather than being the catalysts for justice.

Perhaps for emphasis, I should revert to my earlier opening quote, and call upon the Advocates to reconsider the way we conduct our business.

*“We lawyers must alter our prime axiom-that we are combat mercenaries available indefinitely for any cause or purpose a client is ready to finance...as such we would have to reconsider and revise a system of loyalty to clients that results too often in cover-ups, frauds and injury to the innocent”*⁴¹ (Emphasis supplied)

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⁴¹ Elizabeth Frost-Knappman & Shrager (supra) fn.2

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