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The Quest for Timely Civil Justice Dispensation: A Discussion of Case Management System Applied in the High Court of Tanzania

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ABSTRACT

This research examines the systemic deficiencies in Tanzania's High Court Civil Justice Case Management System (CMS), with particular emphasis on its three foundational components: case scrutinisation, event scheduling, and procedural control. The study employs a comprehensive analysis of current legal frameworks and procedural mechanisms to evaluate the system's effectiveness in facilitating timely justice delivery. The investigation reveals significant structural weaknesses across multiple phases of civil proceedings. At the admission stage, inadequate initial case scrutinisation allows flawed cases to progress through the system, necessitating subsequent judicial intervention during judgment writing. The research identifies critical gaps in statutory time management, particularly in pre-trial proceedings where temporal constraints remain undefined. The hearing phase demonstrates similar systemic shortcomings, lacking prescribed commencement timeframes and allowing indefinite extensions of speed tracks. Furthermore, the study uncovers substantial deficiencies in appellate proceedings, specifically in the scrutinisation and scheduling of appeals, revisions, and auxiliary applications. While the system implements a ninety-day rule for judgment delivery and implies scrutinisation duties, it lacks robust enforcement mechanisms, ultimately compromising judicial efficiency. This analysis contributes to the scholarly discourse on judicial reform by highlighting how structural inadequacies in case management systems can impede civil justice administration. The research concludes by proposing targeted reforms to enhance the existing CMS framework, potentially offering insights for similar jurisdictions grappling with case management challenges.

KEYWORDS

Case Management System; Timely Justice Dispensation; Scrutinisation; Scheduling of Time and Events; Control

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INTRODUCTION

Generally, civil justice connotes means of redress against civil wrongs.[1] It forms part of the justice system responsible for the protection, enforcement, and restoration of individual or organisational rights, except those which are reserved for the criminal justice system.[2] Civil cases involve a plaintiff alleging injury on account of the defendant's act or omission. Such injury can be contractual, commercial, tortious, constitutional, political, administrative, or labour-related. Courts are enjoined to consider the allegations, defence, and evidence for either, examine them under the microscope of the law and delineate the rights and liabilities of each party. The process through which a case is brought to court, considered when the same is resolved thus achieving justice dispensation is referred to as the Case Management System [hereinafter C.M.S.].[3]

1. THE CONCEPT AND TYPES OF CASE MANAGEMENT SYSTEM

What is meant by C.M.S. is subjective and can be defined by an array of words and phrases. Be that as it may, in essence, C.M.S. is used to afford the Court control over the proceedings before it and enhance the chances of timely and frugal justice dispensation.[4] Adoption of C.M.S. came as a response to the litigation practice of the time where litigants and advocates were left to set the pace of litigation and the judge was a mere umpire, a trend which was observed to cause delayed disposition of cases and growing litigation expenses.[5] The various possible ways of defining C.M.S., the essence for its adoption and the pivotal nature of control in C.M.S. allude to the possibility of having a C.M.S. which gives absolute control over proceedings to the judge or the parties, or one which is a hybrid of the two. Depending on who has control over proceedings, the C.M.S

[1] *See* Black's Law Dictionary 741 (Bryan A. Garner ed., 11th ed. 2019). Rebecca L. Sandefur, *Fulcrum Point of Equal Access to Justice: Legal & Nonlegal Institutions of Remedy,* 42 Loy. L.A. L. Rev. 949, 952–53 (2009).

[2] Business Environment Strengthening for Tanzania (BEST), *Law Reform Commission of Tanzania*, Rev. Civ. Just. Sys. Tanz., 2010, at 2.

[3] Courts Administration Division [hereinafter C.A.D.], Case Flow Management: An Assessment of the Ontario Pilot Projects in the Ontario Courts of Justice 4 (1993) (Can.).

[4] Remme R. Verkerk, *What is Judicial Case Management? A Transnational & European Perspective, in* 70 David A. Ipp, *Case Management*, 10 Consultus, May 1997, at 35, 36.

[5] *See* Law Council of Austl. & Fed. Ct. of Austl., Case Management Handbook 16 (2014) (Austl.); A.A.S. Zuckerman, *Lord Woolf's Access to Justice: Plus ça Change...*, 59 Mod. L. Rev. 773, 773-74 (1996); E. Donald Elliott, *Managerial Judging and the Evolution of Procedure*, 53 U. Chi. L. Rev. 306, 309 (1986).

can accordingly be active, passive, or selective, respectively.[6]

1.1. THEORIES OF CASE MANAGEMENT SYSTEM

The adoption of C.M.S. was done in response to the growing case delays and litigation costs.[7] The issue of case delays is indicative of an inexpedient management process. For purposes of assessing and improving management efficiency, several theories have been proposed by literature but three theories guide the discussion of this article. Such theories are the Theory of Constraints [hereinafter T.O.C.], the Scientific Management Theory [hereinafter S.M.T.], and the Role Theory [hereinafter R.T.].

1.1.1. THEORY OF CONSTRAINTS

The T.O.C.'s premise holds that constraints determine the performance of a system.[8] It focuses on identifying bottlenecks which hinder optimum performance of a system in attaining its goals and ways to improve it.[9] Its application requires the identification of constraint, decision on how to address constraint, comprehensive alignment with the decision, elimination of the constraint and a repeat of this cycle at every stage or with every process inhibitor.[10] The T.O.C. has been applied to judicial settings and has been observed to have potency in addressing *inter alia* the congestion of cases in court and the time cases take.[11] Being that the High Court and the judiciary of Tanzania at large have been mandated to dispense justice timely, bottlenecks include any act or omission which has the effect of inhibiting the dispensation of fair, speedy, and affordable justice.[12] Such acts or omissions may be participants' incompetence, adjournments, technicalities, unscrupulous litigants, unnecessary procedures, ineffective case management and the

[6] *See* Álvaro Pérez Ragone, *An Approach to Case Management from the Horizontal and Vertical Structure of Court Systems,* 23 Zeitschrift für Zivilprozess International 345, 356 (2018) (discussing active C.M.S. and how it affords control over proceedings to the Court); Carolynn L. Markram C, Case Management in the context of identifying and reforming undue delay in South African Civil Procedural Law (Jan., 2016) (L.L.M.. dissertation, Univ. of Pretoria) 36-37, 41 https://repository.up.ac.za/bitstream/handle/2263/56978/Markram_Case_2016.pdf?sequence=1&isAllowed=y) (S.Afr.); Anna Olijnyk, Justice and Efficiency in Mega-litigation, (Oct. 2014) (Ph.D. thesis, Univ. of Adelaide) 240 (https://digital.library.adelaide.edu.au/dspace/bitstream/2440/91442/3/02whole.pdf) (Austl.).

[7] Ipp, *supra* note 4, at 36.

[8] *See* John Blackstone, *Theory of Constraints*, 5 Scholarpedia (2010) http://dx.doi.org/10.4249/scholarpedia.10451 (last accessed July 22, 2024).

[9] *See* Zeynep T. Şimşit et al., *Theory of Constraints: A Literature Review*, 150 Procedia – Soc. & Behav. Sci. 930 (2014); Shany Azaria et al., *Justice in time: A Theory of Constraints Approach*, 69 J. Operations Mgmt. 1202, 1205 (2023).

[10] Şimşit et al., *supra* note 9, at 932.

[11] Azaria et al., *supra* note 9, at 1203.

[12] Constitution of the United Republic of Tanzania, Article 107A(2) (b, d and e).

list could go on. The T.O.C. requires there be an intervention to identify and address those impediments to the delivery of fair, speedy, and affordable justice.

1.1.2. SCIENTIFIC MANAGEMENT THEORY

Alternatively known as Taylorism, the S.M.T. proposes the existence and pursuit of the best way of undertaking tasks for the desired efficiency and output.[13] The theory posits systematic or scientific management as the cure for inefficiency.[14] This requires rough methods of procedure to be replaced by precise scheduling and methods of performing each step of work; those expected to perform the work should be trained in such a method; work should be divided equally between workers and managers; and the two should cooperate.[15] The S.M.T., with its focus on enhancing efficiency in the performance of duties, presents an approach for the C.M.S. to adopt in facilitating timely justice dispensation. Like the active type of C.M.S., S.M.T. places on the judge a duty to manage the case, cooperate with the parties, plan, and advocate for the ideal means for dispute resolution and enforce the plan. In this way, the S.M.T., and its proposition, can be applied in the High Court's use of active C.M.S.

1.1.3. ROLE THEORY

This theory is premised on the societal expectations of a person owing to a position or stature, the conformity to which facilitates societal harmony.[16] It has five central suggestions: that patterns of behaviour create contextual roles, that such roles are associated with social position, class and or function, that with roles come expectations of behaviour and actions, roles are perpetual due to being woven into the social system and that roles are taught or inherited.[17] Judges, lawyers, and parties appearing in court occupy and play out roles which have tied thereto, expectations of conduct. The R.T. has it that each such individual has to fulfil the expected role for the sound conduct of the court's business. Judges are expected to competently and expeditiously adjudicate matters before them according to law.[18] As officers of the court, lawyers are, *inter alia,*

[13] *See* Abdullahi M. Ibrahim, *Improving Performances in the Public Sector: The Scientific Management Theory of F W Taylor and Its Implications for Library and Information Services,* 7 The Info. Manager 40, 41 (2007).
[14] *Ses* Nathan H. Gunter, *Gaines S. Dobbins and Scientific Management Theory In 20th Century Church Education*, 12 Christian Educ. J. 355, 358 (2015).
[15] *Id.* at 356-60.
[16] *See* Jeffrey A. Miles, Management and Organization Theory: A Jossey-Bass Reader 225 (2012).
[17] *Id.*
[18] *See* Tomas A. Guimarães et al., *Role Conflict and Role Ambiguity in the Work of Judges: The Perceptions of Portuguese Judges*, 51 Braz. J. of Pub. Admin. 927, 932 (2017).

expected to assist the court in the conduct of its business.[19] Like the T.O.C. and the S.M.T., the R.T. speaks to the active role of judges in controlling court proceedings.

For the discussion hereinafter, the collective thesis of the guiding theories is that the identification of impediments (T.O.C.), the use of methodical or systematic procedures (S.M.T.) and the effective execution of designated roles (R.T.) produce efficiency. Criticisms against each guiding theory, like adding to the duties of the judge, ignoring the prevailing circumstance and extraneous factors affecting efficiency, confining the actions to expectations, and not accounting for possible innovativeness, are acknowledged.[20] However, their collective use is for their complementary effect to counter respective limitations.

1.2. THE PROBLEM

In Tanzania, legislative and administrative measures have been taken, by the legislature and judiciary alike, to establish and apply a C.M.S. in the High Court of Tanzania [hereinafter the High Court / the Court]. Such measures include the establishment of case-flow management and bench-bar monitoring committees, adoption of the 'First-In-First-Out' policy, same-day admission and assignment policy, Alternative Dispute Resolution [hereinafter A.D.R.], individual calendar, zero case-backlog policy, overriding objectives, scheduling conferences, adjournment control, specialised courts, case disposal quotas and the wider use of Information Communication Technology (I.C.T.) in adjudication.[21] Despite the adoption of such measures, case delays persist and performance statistics of the High Court indicate the continued existence of backlog cases (cases pending in court for more than two years) between 2020 and 2023,[22] which is symptomatic of an ineffective C.M.S.

[19] *See* Eugene R. Gaetke, *Lawyers as Officers of the Court*, 42 Vand. L. Rev. 39, 40, 42-43 (1989).

[20] *See* Olu Awofeso, *Managing Formal Organizations in the 21st Century: A Critique of Fredrick Taylor's Scientific Management Theory*, 5 J. Pub. Mgmt. Rsch. 1, 9 (2019).

[21] *See* Sufian H. Bukurura, Judiciary and Good Government in Contemporary Tanzania 20-21, 43 (1995).

[22] Chief Registrar, 2020 Comprehensive Performance Report of the Judicial Functions 14 (2021) https://tanzlii.org/akn/tz/doc/jot-documents-and-guidelines/2021-04-01/comprehensive-performance-report-of-the-judicial-functions-2020/eng@2021-04-01/source (Tanz.); Chief Registrar, 2021 Comprehensive Performance Report of the Judicial Functions 19 (2022) (Tanz.); Chief Registrar, 2022 Comprehensive Performance Report of the Judicial Functions Chapter II – 5 and 6 (2023) https://tanzlii.org/akn/tz/doc/jot-documents-and-guidelines/2023-02-01/comprehensive-performance-report-of-the-judicial-functions-2022/eng@2023-02-01 (Tanz.); Chief Registrar, 2023 Comprehensive Performance Report of the Judicial Functions 25 (2024) (Tanz.).

1.3. LITERATURE REVIEW

Failure of the adopted legislative and administrative measures to ensure timely justice dispensation and curing case delays is not unique to Tanzania and its High Court. An empirical study done in the Dhaka District Judge Court – Bangladesh, revealed that such a measure alone did not solve the case delay issue.[23] Wherefrom, the implementation of a proper C.M.S. and court modernisation were recommended.[24] Another study done by comparing the situation in Bangladesh, North-South Wales, and Australia echoed such findings with similar recommendations.[25]

Resoundingly, studies exploring the timely justice dispensation situation in various jurisdictions acknowledge the insufficiency of legal initiatives, exclusive of administrative measures and facilitative culture, in ensuring justice and expediency. A comparative discussion of the position in Australia and the United States of America [hereinafter U.S.], and the success story of the Singapore judiciary, hail the efficacy of a C.M.S. made up of legal, administrative, and cultural attributes which enhance expedience.[26] Such empirical studies offer the current discussion, a literature basis for assessment of the C.M.S. applied in the High Court for civil justice dispensation. They provide insight into the potential challenges likely to arise as part of the C.M.S. implementation and strategies which can be adopted. Unanimously, such studies posit the need for a C.M.S. for just and expedient adjudication. However, in as much as Tanzania has adopted measures which depict a C.M.S., the same has not been efficacious and case delays remain commonplace. This article, therefore, examines the steps civil cases go through before the High Court and assesses the applied C.M.S.'s stature in ensuring timely justice dispensation.

[23] *See* A.B.M. Asrafuzzaman and Golam M. Hasan, *Causes and Redresses of Delays in Disposal of Civil Suits in Dhaka District Judge Court: An Empirical Study*, 32 Dhaka Univ. L. J. 135, 141-55 (2021) (discussing causes of delay in different steps of civil cases and recommendations to improve efficiency).

[24] *Id.* at 155-59.

[25] *See* Ummey S. Tahura, Case Management in Reducing Case Backlogs: Potential Adaption from the New South Wales District Court to Bangladesh Civil Trial Court (Feb. 24, 2015) (M.Phil. thesis, Univ. of Macquire) 157 (https://doi.org/10.25949/19441841.v1) (Austl.).

[26] *See* Waleed H. Malik (WBG), Judiciary-Led Reforms in Singapore: Framework, Strategies and Lessons, Doc. N.38779, at 16–17, 34–55, 66 (2007), https://openknowledge.worldbank.org/server/api/core/bitstreams/289719af-3f32-5c6f-96bf-ed55683c16bb/content; Steven S. Gensler, *Judicial Case Management: Court in the Crossfire, Special Symposium Issue: 2010 Civil Litigation Review Conference*, 60 Duke L. J. 669, 700, 726-27, 743 (2010) (discussing role of the case management in the U.S. legal system).

The pursuit for timely justice dispensation and the challenge of case delays traverses common and civil law jurisdictions.[27] While comparing the French and the U.S. civil justice dispensation systems, Emerson indicates the possible adoption of the *constat* technique to address the discovery step delays in the U.S. civil justice dispensation system.[28] The *constat* technique presents a mechanism used in the French civil justice dispensation system to reduce the time taken during the discovery step of civil litigation, by reducing the number of documents which need to be reviewed.[29] Tanzania being a common law jurisdiction like the U.S. and having discovery as a possible step in civil justice, the *constat* technique presents another C.M.S. technique which can be adapted to the Tanzania context.

An examination of the legal position in Finland, Norway, and Brazil depicts the existence of an active type of C.M.S. in those jurisdictions with the scrutinization, scheduling of time and events and the control element of C.M.S. clearly provided for by their respective procedural law.[30] Such elements are exhibited by the existence of case management or preparatory judges, case management hearings, active screening of cases for competence and issues, promotion of A.D.R. and control of pace by judges, and abridged time spans between case steps and limitation of hearing lengths by judges to mention a few, as provided by respective legal framework.[31] Such legal positions, though hailing from civil law jurisdictions, offer a blueprint of how an active C.M.S. type can be used to facilitate timely justice dispensation in the context of the High Court and Tanzania at large.

1.4. ELEMENTS OF CASE MANAGEMENT SYSTEM

The effectiveness of C.M.S. is predicated on it having the essential elements, which facilitate the systematic, predictable, and consistent management of cases. To this end, the essential elements of C.M.S. are early and continued scrutinization or screening of filed cases, the scheduling of time and events of the case, and the court's supervision or

[27] *See* Robert W. Emerson, *The French Constat: Discovering More Efficient Discovery,* 36 Bos. Univ. Int'l. L. J. 1, 25-28 (2018) (comparing the efficiency of the French and U.S. civil justice systems); Anna Nylund, *Case Management in a Comparative Perspective: Regulation, Principles and Practice,* 292 Revista de Processo 377, 378 (2019) (discussing the use of C.M.S. to enhance the efficiency and quality of civil litigation, and how legal cultures affect C.M.S.).
[28] Emerson, *supra* note 27, at 25-28.
[29] *Id.* at 30-32.
[30] Nylund, *supra* note 27, at 381-87.
[31] *Id.*

control over the proceedings.[32] These essential elements are necessary building blocks of an efficacious C.M.S. Such elements have to be provided for and exist systemically in the legal regime and must be applied and have practical means to ensure compliance. The existence, part existence or non-existence of the essential elements is consequential to the applied system's ability to ensure a timely and cost-conscious justice dispensation process.

1.5. HYPOTHESIS

Informed by comparable practice, type, elements and theories of C.M.S., this article hypothesises that the system lacks essential elements and faces legal and practical challenges to its efficacy. To address the intention and hypothesis of the article given the procedures provided by law, the article examines the amalgamated civil case steps, and tests the existence or sufficiency of the essential elements of C.M.S. and their compliance in the civil justice dispensation before the High Court.

1.6. METHODOLOGY AND LIMITATION

This article is a revised version of a part of the author's Ph.D. thesis and makes use of the data collected for that study. The study and this article take a combined, doctrinal, and empirical, research approach after which the produced data is triangulated to inform its discussion.

Doctrinal research review of the civil justice dispensation C.M.S. is limited to the procedures for redress covered under the laws discussed subsequently in this article.

Primary data was collected from consented semi-structured interviews with 226 respondents, ninety-four questionnaire respondents, the review of legislation, circulars and original case files accessed from the Arusha, Mwanza, Dodoma, and Dar es Salaam High Court Registries. The 226 interview respondents included the Chief Justice of Tanzania, eighteen Justices of the Court of Appeal, sixty-nine Judges (including one retired Principal Judge), fifty Registrars of the High Court, fifty-two State Attorneys,

[32] *See* Victorian Law Reform Commission, Civil Justice Review: Report 291, 355 (Report No. 14, 2008), https://www.lawreform.vic.gov.au/wp-content/uploads/2021/07/VLRCCivilJusticeReview-Report.pdf; County Court of Victoria, Civil Trial Process 1 (Fact Sheet No. 7) [hereinafter C.C.V.], https://www.countycourt.vic.gov.au/files/documents/2020-07/factsheet-7-civil-trial-processes_1.pdf; C.A.D., *supra* note 3; Evan Bell, *Judicial Case Management*, 2 Jud. Stud. Inst. J. 76, 97 (2009). Dennis Byron, President of the Caribbean Court of Justice, Case Management for the African Court on Human & Peoples' Rights, Remarks on the occasion of the Judicial Education and Training Programme for Judges of the African Court of Human & Peoples' Rights 5 (Mar. 5-7, 2014) , https://ccj.org/wp-content/uploads/2021/03/Remarks-at-the-Judicial-Education-&-Training-Programme-for-African-Judges-of-Human-&-Peoples-Rights-on-Case-Management-_Sir-Dennis-Byron_20140305.pdf (Tanz).

including the Attorney General [hereinafter A.G.], Solicitor General and the Director of Public Prosecution, twenty-one senior advocates with over ten years of practice experience and fifteen court brokers. The ninety-four questionnaire respondents included twenty-six judges law assistants, twenty-six Records Management Assistants and forty-two litigants with cases before the High Court which have been pending for more than forty-eight months.

To select the participating respondents, the authors used purposive sampling to select the Chief Justice, the A.G., S.G., D.P.P., the Chairperson of the Chief Justices Rules Committee from among the participating Justices of Appeal, Hon. John Kahyoza who is a High Court Judge, the Chief Registrar of the Judiciary, the Directors of Case Management of the Judiciary, the President of the Tanganyika Law Society from among the participating senior advocate and the Legal and Human Rights Centre Director of Advocacy and Reforms. These participants were purposively selected on the basis of their in depth, privileged and specialised knowledge about the subject under study by virtue of their roles. Thereafter, the authors employed convenience sampling to select 45 Judges and 11 Deputy Registrars of the High Court from Arusha, Dar es Salaam, Dodoma, and Mwanza High Court sub-registries when the sub-registries were visited for data collection. Convenience sampling was also used to include 1 retired Principal Judge who was selected based on his availability. The authors used simple random sampling to select 17 Justices of Appeal, 22 Judges and 35 Deputy Registrars of the High Court not purposively or conveniently selected. The authors used the excel RAND function to randomise the names of potential participants from each group and pick from the top to the bottom. Lastly, the authors used restricted random sampling to select participating state attorneys, senior advocates, Judges' Law Assistants, record management assistants, litigants and court brokers. This technique allowed the researcher to restrict the number and type of respondents from these groups in the ways described above.

To avoid potential conflict of interests or bias, which the first author may have owing to his position, the authors enlisted the assistance of two research assistants for data collection purposes. Both research assistants were resident magistrates, holding a bachelor of laws and post graduate diploma in legal practice, and one holding a masters of law on top of those two qualifications. The selection of the research assistants was done at the convenience and judgment of the authors after satisfying themselves that the research assistants meet the necessary qualifications to conduct legal research, are able to understand the problem under study and comply with the necessary ethical requirements.

In data collection, primary consent was sought for the participation of each respondent and they were informed that the information they give would be used for

academic purposes only. Thereafter, the research assistants and the first author, as applicable, conducted interviews with and administered questionnaires to respondents who were officers of the High Court and other respondents against whom the first author has influence over their employment, case, or licensing status, that is, Judges, registrars and deputy registrars, judges' legal assistants, record management assistants, litigants, and court brokers. Data from those respondents was collected by the research assistants without the first author's participation. On the other hand, the first author participated in the collection of data from the remaining respondents against whom he has no influence over their employment, case, or licensing status, that is, Justices of Appeal, state attorneys and senior advocates.

During this exercise, the respondents were also informed that their identities would be anonymised, unless their secondary consent for disclosure of their identities is specifically sought. The interviews were recorded using a digital audio voice recorder and the participants were not required to disclose their identities on record. In areas where the authors thought it necessary to disclose the informing respondents' identity, they sought secondary consent for such disclosure from the respective respondent, showing the exact information which, the authors intended to quote or attribute to each particular respondent.

Interviews were conducted between February and May, 2023. The data collection process involved semi-structured interviews with 224 respondents in-person and with two respondents via teleconference. Being semi-structured and curated for each group, the interviews had between seven and 15 questions while the questionnaires had between 6 and 11 standardised questions subject to the group of respondents. For interviews, the questions were presented in a fixed order except for times when follow up questions were considered necessary and on average the interviews ran for 30 minutes.

The interviews and questionnaires offered real-life insights into the civil justice practice and various challenges borne thereof. They gave this work in depth perspective on different issues relevant to addressing the hypothesis. While some interview responses are cited in the work as relevant, questionnaire survey responses were combined with the interview responses, coded, and analysed to quantify the responses. The quantitative findings were used to support the article's qualitative findings.

Further, data from interviews and questionnaires was thereafter coded into numerical responses. Using IBM SPSS Statistics 26, data sets for every respondent group were created. From such individual data sets, a comprehensive data set for all respondents, as and where relevant, was created. The data sets were thereafter analysed to extract the frequencies for each response and inform this article's quantitative

arguments and conclusions. The data collected from interviews and through questionnaires was not case-type sensitive for the most part and it was analysed as such. Consequently, though the data provides a general picture of the case management practice, it cannot be used to draw definitive differences in the practice of civil justice against criminal justice or vice versa.

Secondary data was collected from books, journals, theses, dissertations, conference papers and authoritative reports. The researcher's experience as the Principal Judge of the High Court was essential in informing this article. There are a few limitations of this article. It is worth noting that the essence of this article takes a novel look at the issue of C.M.S. As such, local literature on the topic is scant. This has caused great reliance on literature from other jurisdictions and their relation and inference to the High Court's context.

1.7. STEPS *VIS-À-VIS* ELEMENTS IN CIVIL JUSTICE CASE MANAGEMENT SYSTEM

The steps under review are categorised into seven groups which are the presentation of pleadings, pre-trial events, alternative dispute resolution, final pre-trial conference, original case hearings, hearing of appeals, revisions and other applications, and judgement. Admittedly, some of the steps covered, result from the amalgamation of individual steps. Such a review style is adopted with cognizance of such combined steps' close relation, their connected execution in practice and for better discussion contextualisation. Again, not every civil case goes through all the discussed steps in the outlined manner and the steps which a case will go through are subject to the type of case in question.

2. PRESENTATION OF PLEADINGS

Civil suits in the High Court commence with the presentation of pleadings, a stage which entails the filing of a plaint, statement of complaint, an application by way of a chamber or originating summons, a petition, notice and memorandum or petition of appeal and or a prescribed form to that effect by the person seeking redress.[33] Generally, the pleadings stage also includes the presentation of a reply from the party against whom redress is sought in the form of *inter alia* a Written Statement of Defence [hereinafter W.S.D.], a reply to a petition, a counter affidavit.[34] This pedestal stage marks the beginning of a suit before the High Court and puts into gear the mechanisms for its management.[35] From the garbage in garbage out principle, it cannot be overemphasized that an effective C.M.S. must take effect at the earliest stage possible, in this case, the presentation of pleadings stage, for sorting the competent and from the incompetent.[36]

Pleadings are creatures of law and are intended to establish the jurisdiction of the Court, form the basis of the Court's decision, set out the issues in dispute between the parties and notify each party of the other party's assertions.[37] To achieve these purposes, respective laws prescribe the format and content to be complied with and provided by every pleading.[38] Such a prescription can be used to identify non-compliant or defective pleadings, which the law penalises by way of their rejection or return for amendment.[39]

This prescription of format and content, and the rejection or return on non-compliant pleadings, underscores the scrutinization and control elements of C.M.S. It necessarily means that such a pleading has been measured against the required standards and found to fall short and the Court has used its mandate to control its

[33] Civil Procedure Code [CAP. 33 R.E. 2019], s 22, Order XXXIX r. 1(1), Order XLIII r. 2; Magistrates Court Act [CAP. 11 R.E. 2019], 1984, Act No 2 of 1984, s 25(3); National Elections Act [R.E. 2015] Cap. 343, s 108(2); High Court (Commercial Division) Procedure Rules, 2012, G.N. No. 250 of 2012, Cap. 358, s 10(1); Labour Court Rules G.N. No. 106 of 2007, s 6 (1), 24 (1), 26(1), 28 (1), 29, 31 (1); Law Reform (Fatal Accidents and Miscellaneous Provisions) (Judicial Review Procedure and Fees) Rules, 2014, G.N. No. 324 of 2014, Cap. 310, s 8(1) (a); The Basic Rights and Duties Enforcement Act, Act No 5 of 2019, Cap. 3, s 5.

[34] Civil Procedure Code, Order VIII r. 1(1); Basic Rights and Duties Enforcement (Practice and Procedure) Rules, G.N. No. 304 of 2014, Cap. 3, r. 6(1); National Elections (Election Petitions) Rules, G.N. 782 of 2020, Cap.343, r. 10(4); Law Reform (Fatal Accidents and Miscellaneous Provisions) (Judicial Review Procedure and Fees) Rules, r. 13; Labour Court Rules, r. 24 (4).

[35] *See* Ian J. Wilson & William L. Payne, *The Specificity of Pleading in Modern Civil Practice: Addressing Common Misconceptions*, 25 U. Rich. L. Rev. 135 (1990).

[36] *See* Monique F. Kilkenny & Kerin M. Robinson, *Data Quality: "Garbage in – garbage out"*, 47 Health Info. Mgmt. J. 103 (2018).

[37] *See* Charles E. Clark, *History, Systems and Functions of Pleading*, 11 Va. L. Rev. 517, 518 (1925). James R. Maxeiner, *Pleading and Access to Civil Procedure: Historical and Comparative Reflections on Iqbal, A Day in Court and a Decision According to Law*, 114 Penn St. L. Rev. 1257, 1266 (2010).

[38] Clark, *supra* note 37.

[39] Civil Procedure Code, Order VI r. 16 – 18, Order VII r. 10 – 12 and Order XXXIX r. 3(1); National Elections (Election Petitions) Rules, r. 9; High Court (Commercial Division) Procedure Rules, 2012, G.N. No. 250 of 2012, Cap. 358, r. 19 (2).

workload. At presentation, it is the practice that the registrar responsible for the respective registry of the High Court can either admit, reject, or return the pleading. The discretion to admit, reject or return pleadings speaks to the duty to scrutinize pleadings.

In the collection of primary data, interviews with fifty registrars were conducted. When queried about their role and responsibility, forty-four out of the fifty responding registrars, equivalent to eighty-eight per cent, held the view that a registrar has the responsibility to scrutinize cases before their presentation to judges.[40]

Scrutinization Before Presentation to Judge

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	1	44	88.0	100.0	100.0
Missing	System	6	12.0		
Total		50	100.0		

Table 1: Response of Registrars to an Interview Question About Their Role and Responsibility.

This majority view presupposes the existence of a duty to scrutinise pleadings at their presentation. Notwithstanding the support for scrutinization by registrars, its inference from the law and its practice, this duty is largely missing among the duties or responsibilities of a registrar under the law. The scrutinization of pleadings at their presentation or at any further stage is also generally not one of the envisaged duties of a registrar under the Judiciary Administration Act.[41] Commercial cases are the exception to this lack of duty, where the registrar is expressly empowered to scrutinise and reject an affidavit or counter affidavit which violates Order IX of the C.P.C., Section 8 of the Notaries Public and Commissioners for Oaths Act, Cap.12 [R.E. 2019] or some other prescribed requirement.[42] The law's use of the word "may" when affording registrars the power to reject defective affidavits, indicates that the registrar is at liberty to either reject the same or admit it notwithstanding its defects.[43] The discretionary nature of this power can have the inadvertent effect of defeating the intention of vesting registrars with such power.

Similarly, so, scrutinisation of pleadings is generally not among the powers of registrars under the C.P.C. save for when the pleadings concern an execution application.[44] The

[40] *See infra Table 1.*
[41] Judiciary Administration Act, No. 4 of 2011, s 28(6), (8) (Tanz.).
[42] High Court (Commercial Division) Procedure Rules, r. 74(1), (2).
[43] *Id.* r. 74(1).
[44] Civil Procedure Code, Order XLIII r. 1.

C.P.C. provides for the striking out or amendment of pleadings which are unnecessary, scandalous or prejudicial, embarrassing and or delay timely justice dispensation.[45] It also provides for the returning of a plaint for its presentation to a competent court or its rejection for want of cause of action, undervaluation of the claimed relief or being barred by law.[46] A defectively drawn memorandum of appeal can be rejected or returned for amendment under the C.P.C.[47] Notably, however, all these provisions empower the Court, meaning the judge, to reject or return the pleadings and not the registrar.[48] This invariably means that, in all four instances where rejection or return of pleadings can be done under the C.P.C., a registrar is legally empowered to reject or return pleadings in only one instance during execution applications.

Notwithstanding these apparent provisions, Order XLIII clothes registrars with the power to do all things which can be done by a judge.[49] Since judges can scrutinise pleadings, by this provision then, a registrar is impliedly empowered to scrutinise pleadings and reject or returnthem just as how a judge can do. While it can be used as a saving clause, the provision has the potential inadvertent effect of casting a wide net as to the mandate of registrars to the extent of being vague and up to the interpretation of each individual registrar. This subjective approach as to the powers and roles of a registrar is exemplified by the interviewed registrars' responses. While forty-four out of fifty registrars thought scrutinization was part of their duties, six. did not.[50] As a category of respondents holding the same office across High Court Registries, they were expected to have the same understanding of their roles. The difference, though small, can be attributed to the possible subjective interpretation of Order XLIII Rule 1(m) of the C.P.C. [51]

Order XLIII Rule 1(m) of the C.P.C. is also subject to further interpretation. If the judge is only able to scrutinise pleadings at the secondary stage of the commencement of a case, it means then that the registrar is also only clothed with such power at that stage and not prior. However, after assignment to a judge, it is impractical for a registrar to have conduct of a case file to be able to scrutinise and thereafter reject or return pleadings. If the powers of the judge include those of a judge in-charge, who is empowered to admit, reject or return pleadings before assignment as per the Chief Justice's Circular on admission and assignment of cases, then the registrars would also be

[45] *See id.* Order VI r. 16.
[46] *See id.* Order VII r. 10 and 11.
[47] *See id.* Order XXXIX r. 3(1).
[48] *See id.* Order VI r. 16, VII r. 12, XXXIX r. 3(2).
[49] *See id.* Order XLIII r. 1(m).
[50] *See supra Table 1.*
[51] *See*, Civil Procedure Code, *supra*,note 44, at Table 1; *id* at Order XLIII Rule 1 (m).

able to scrutinise pleadings during the first stage of commencement of a suit at the presentation of pleadings.[52] This potential for subjective and inconsistent interpretation is at odds with the S.M.T. which links efficiency with a systematic and predictable business process.

The fact that the judge's power to scrutinise and consequently reject or return pleadings kicks in at a secondary stage following assignment and the C.P.C. does not clearly and decisively cater for admission of pleadings and their scrutinization in the first stage of the presentation of pleadings step, heightens the possibility of having defective pleadings go unnoticed until advanced stages of the case or until appeal. Such a possibility has resulted in the pendency of cases in court for an unnecessarily long period only for the same to be found defective in their pleadings and struck out. For instance, *Ramadhani Pazi & Wambura Malima v. Tanzania Civil Aviation Authority* is a case in point.[53] In this case, the Applicants' affidavit was defective in its jurat contrary to Section 10 of the Oaths and Statutory Declarations Act, Cap.34 [R.E. 2002]. [54] Though this defect was present from its filing, the matter proceeded to assignment and was later determined through a ruling of the raised preliminary objection which struck it out.[55] This case was filed in 2013 and was determined in May 2014 on grounds which existed and could have been addressed on the day it was filed.[56]

Another more recent example is from the case of *Avecenna International Academy v. African Foundation for Education and Development (AFEDEV) Tanzania*.[57] This case was filed in 2021 and struck out in May 2023. The filed case had a defective plaint which offended Order VI Rules 3, 5 and 14 and Order VII Rules 1(b, f & i) of the C.P.C. The defect was raised as a preliminary objection, was conceded by the Plaintiff and the matter was struck out. Though this case ended in the preliminary stage, two years had lapsed up to the point when it was struck out.[58] The admission and continued existence of a suit with a patently defective plaint for that period, is evidence of the absence or at best an insufficient mandate or level of scrutiny. When there is no legal requirement on a person to carry out a task, the efficiency of the conduct of such a task based on practice and or personal attributes, cannot be of the same effect.

[52] C.J. Circular, Admission & Assignment of Cases to J. & Mag., No. 3 of 2018 (Issued on Apr. 16, 2018), para 4 (Tanz.).
[53] Ramadhani Pazi & Wambura Malima v. Tanzania Civil Aviation Authority, Labour Revision No. 325 of 2013 (HC) (unreported).
[54] *See id.* at 2, 11.
[55] *See id.*
[56] *See Id.*
[57] Avecenna International Academy v. African Foundation for Education and Development (afedev) Tanzania Civil Case 61 of 2021, [2023] TZHC 16977 (May 3, 2023).
[58] *See id.* at 5, 10.

With judicial review, where applications for leave are to be filed within six months from the cause of action accrued, applications which are out of time for as little as a day, though they may not be rejected at their presentation, succumb to being dismissed following a challenge through preliminary objections or the Court *suo moto*.[59] The secondary means of scrutinization by judges facilitates timely justice dispensation by enforcing time limitations.

Apart from scrutinization by way of checking pleadings and rejecting or returning them on form and content grounds, another means of scrutinization at the presentation of pleadings step is by the requirement of leave to file such pleadings, to begin with.[60] Particular to judicial review proceedings, this method of scrutinization is a necessary prerequisite where the Court has to satisfy itself that the potential applicant for prerogative orders has sufficient interest in the matter to be applied, displays an arguable *prima facie* case and is generally without alternative remedy.[61] In this way, the Court can limit the number of judicial review applications filed and only deal with those which are worth the Court's attention to the effect of controlling the Court's workload.

Scheduling of time for events as another element of C.M.S., is provided for in this step. With judicial review, the application for leave is to be determined within fourteen days.[62] This timeline is based on the understanding that applications for leave to apply for judicial review are heard *ex-parte*.[63] As such, the law does not provide for the time within which an application is to be served on the respondent and when the respondent is to file a counter affidavit, if any. *Ex-parte* hearing of leave applications does not include cases to which the A.G. is a party.[64] In such cases, the Court is given discretion to schedule the time within which the A.G. is to be served and is to file a counter affidavit.

The law does not schedule a time and events, where leave applications proceed inter-party. As a result, regarding the fourteen-day determination timeline, it was found that out of the fifty-three applications for leave to apply for judicial review which were processed by the High Court – Main Registry at Dar es Salaam, only five applications

[59] Law Reform (Fatal Accidents and Miscellaneous Provisions) (Judicial Review Procedure and Fees) Rules, 2014, G.N. No. 324 of 2014, Cap. 310, r. 6; Chris George Kasalile v. Tanzania Institute of Education and Another, Misc. Cause 26 of 2022, [2022] TZHC 11389 (Aug. 9, 2022).

[60] Law Reform (Fatal Accidents and Miscellaneous Provisions) (Judicial Review Procedure and Fees) Rules, r. 5(1) (Tanz.).

[61] Emma Bayo vs The Minister for Labour and Youths Development & Others, Civil Appeal 79 of 2012, at 8, [2013] TZCA 190 (March 23, 2013); Legal and Human Rights Centre v. Minister for Finance and Planning and Others (Misc. Cause 42 of 2022) [2022] TZHC 14055 (Oct. 18, 2022).

[62] Law Reform (Fatal Accidents and Miscellaneous Provisions) (Judicial Review Procedure and Fees) Rules, r. 5(4) (Tanz.).

[63] *See id.* r. 5(2).

[64] Law Reform (Fatal Accidents and Miscellaneous Provisions) Act [R.E. 2019], Act No. 6/1955 s 18, Cap.310 (Tanz.).

equivalent to 9.4% were completed within fourteen days.[65] Out of the five, only one was decided on merit, however, it was not tried rather the respondent conceded the application.[66] Two out of the five were withdrawn by the applicant and the remaining two succumbed to the preliminary objections raised against them. These statistics point to there being minimal compliance if all cases are considered regardless of the import of their decision. Otherwise, they point to there being no compliance with the fourteen-day rule for all forty-eight applications for leave which were determined on merit.

With other civil cases, W.S.D.'s which reply to a plaint, are to be filed in twenty-one days from service of a summons to that effect, a period extendable by ten days.[67] Replies to election or constitutional petitions and counter affidavits in judicial review proceedings applications are to be filed within fourteen days, while a reply to a labour case is to be filed within fifteen days from service of the action commencing document and summons.[68] While the scheduling of events element is provided for, the allowance for extension of time, though subject to reasonable or sufficient cause, works to negate the essence of scheduling time and events in a case.[69] Some extensions appear to be allowed without any such cause being recorded, others allowed even on default caused by a party's negligence and others at advanced stages of suits.[70]

For instance, in *Monarch Investment Ltd. v. CRDB Bank PLC & MEM Auctioneers and General Brokers Ltd*., initial orders were issued on 10th August 2018 for W.S.D. to be filed and the case be called again on 19th September 2018.[71] It is surmisable that the initial order, which adjourned the case for forty days, reasonably afforded twenty-one days for the filing of the W.S.D., five for its service and fourteen for the filing and service of a reply to the W.S.D. However, on 19th September 2018, the W.S.D. had not been filed and the Defendant successfully prayed for a fourteen days extension to that effect.[72] Not only does the record bear any reasons for the default in filing the W.S.D. but also the granted extension was of

[65] Judiciary of Tanz. - Main Registry of the High Court, Case Register for Judicial Review Miscellaneous Civil Applications (last visited Dec. 18, 2023).
[66] *See id.*
[67] Civil Procedure Code [CAP. 33 R.E. 2019], s 22, Order VIII r. 1(1), (3); High Court (Commercial Division) Procedure Rules, 2012, G.N. No. 250 of 2012, Cap. 358, r. 20(1), (2) (Tanz.).
[68] National Elections (Election Petitions) Rules, G.N. 782 of 2020, Cap. 343, r. 10(4); Basic Rights and Duties Enforcement (Practice and Procedure) Rules, G.N. No. 304 of 2014, Cap. 3, r. 6(1); Law Reform (Fatal Accidents and Miscellaneous Provisions) (Judicial Review Procedure and Fees) Rules, 2014, G.N. No. 324 of 2014, Cap. 310, r. 13; Labour Court Rules G.N. No. 106 of 2007, r. 6(3), (5), 24(2) (e) (Tanz.).
[69] Civil procedure Code, Order VIII r. 1(3), (4); High Court (Commercial Division) Procedure Rules, r. 20(2), (3) (Tanz.).
[70] Meet Singh Gurbax Singh v Tanz. Ry. Corp., Land Case No. 68 of 2017 (Arusha HC sub-registry, struck out Aug 13, 2021) (Unreported) (Tanz.).
[71] Monarch Inv. Ltd. v. CRDB Bank PLC & MEM Auctioneers & Gen. Brokers Ltd., Land Case No. 23 of 2018 (Mwanza HC sub-registry, settled Feb 09, 2021) (Unreported) (Tanz.).
[72] *See id.*

greater length than that allowed by law.[73] Again, for failure to comply with the original scheduling order, the pleadings exchange phase stood pending until 12th February 2019 when they were marked complete.[74]

Further, in the case of *Meet Singh Gurbax Singh v. Tanzania Railways Corporation,* though the W.S.D. was originally filed within the twenty-one allowed days, amendments ordered thereafter did not comply with the ordered filing date which was accordingly extended two times.[75] When the case was called for its first Pre-Trial Conference [hereinafter P.T.C.] on 27th August 2019 the Defendant successfully prayed to file an amended W.S.D. on 03rd September 2019.[76] However, when the matter was called on 11th September 2019 the amended W.S.D. had not been filed due to miscommunication in the Defendant's office as such time for filing was extended to that same day.[77] On 16th October 2019 first P.T.C. was conducted and speed track two for twelve months was ordered.[78] When the matter finally came for hearing on 18th May 2020 the Defendant successfully prayed for leave to file an amended W.S.D. but when the matter came before the presiding Judge on 07th December 2020 for hearing the Defendant had not filed the second amended W.S.D. and time for filing was again extended to that same day.[79] As a result, a 2017 case matured for hearing on 11th December 2020 having already run past its ordered speed track due to *inter alia* the recurring allowance of amendments and extensions of time to file W.S.D. for reasons which were not necessarily exigent.[80] These cases present a two-fold cause of non-compliance with the legally scheduled timelines. On the one part, it's the law's permittance for deferment of the scheduled time and on the other is the issue of laxity in control of the proceedings by the Court. It demonstrates how the ordered schedule of time and events can be changed repeatedly. While such changes may be grounded in the pursuit of justice, they can inadvertently or otherwise, delay the justice sought and diminish the essence of the scheduled time and events.

[73] *See id.*; Civil Procedure Code, Order VIII r. 1(3).
[74] Monarch Inv. Ltd. v. CRDB Bank PLC & MEM Auctioneers & Gen. Brokers Ltd.
[75] Meet Singh Gurbax Singh v. Tanz. Ry. Corp., Land Case No. 68 of 2017 (Arusha HC Registry) (Tanz.).
[76] *See id.*
[77] *See id.*
[78] *See id.*
[79] *See id.*
[80] *See id.*

Evidently, court control over proceedings complements the scrutinization and scheduling elements of C.M.S. in pursuit of timely justice dispensation. In the presentation of pleadings step, the power of the Court to reject or return defective pleadings, speaks to the Court's control over the commencement of civil cases.[81] Further, the requirement for and the ability to grant or deny leave to apply for judicial review speaks to the control of the Court over the cases it gets to hear.[82]

Again, the law allows the Court to entertain an *ex-parte* application for leave to apply for judicial review and grant the same without necessarily hearing the applicant.[83] This allowed manner of control is geared towards expedience, mindful of the fourteen day time limit within which to determine a leave application from when it is filed. However, the practice shows that such applications are seldom if at all, determined *ex-parte* or without hearing the applicant and only 9.4% out of the fifty-three reviewed case files were finalised within fourteen days.[84] This points to there being challenges on compliance.

The law further allows the Court to proceed *ex-parte,* receive proof from the plaintiff and enter an *ex-parte* judgement when a defendant defaults in filing W.S.D.[85] The effect of this manner of control in timely justice dispensation is generally undermined by the sixty-days or thirty-one-days (for commercial cases) bar against execution of an *ex-parte* decision.[86] A decree from an *ex-parte* judgement in a commercial case cannot be executed unless first the decree holder publishes a copy of the decree in a country wide circulating newspaper within ten days from the date of the judgement and second twenty-one days lapse after the lapse of the publication period.[87] While this buffer period may be aimed at ensuring that the defendant is aptly informed, it has the effect of delaying realisation of the proclaimed right and affecting timely justice dispensation. Again, the possibility to have the *ex-parte* proceedings and judgement set aside, would

[81] National Elections (Election Petitions) Rules, G.N. 782 of 2020, Cap.343, r. 9(1), (2); Civil Procedure Code [CAP. 33 R.E. 2019], s 22, Order VI r. 16- 17, Order VII r. 10 and 11 (Tanz.).
[82] Law Reform (Fatal Accidents and Miscellaneous Provisions) (Judicial Review Procedure and Fees) Rules, 2014, G.N. No. 324 of 2014, Cap. 310, r. 5(1) (Tanz.).
[83] *See id.* r. 5(2) and 7(1).
[84] Judiciary of Tanz., *supra* note 63; *see* the findings discussion on Presentation of Pleadings p ; Chris George Kasalile v. Tanzania Institute of Education and Another, Misc. Cause 26 of 2022, [2022] TZHC 11389 (Aug. 9, 2022); Joshua Samwel Nassari v. The Speaker of the National Assembly of the United Republic of Tanzania and Another (Misc. Civil Cause 22 of 2019) [2019] TZHC 15782, at 3 (Mar. 29, 2019).
[85] Civil Procedure Code, Order VIII r. 14(1); High Court (Commercial Division) Procedure Rules, 2012, G.N. No. 250 of 2012, Cap. 358, r. 22(1); High Court (Commercial Division) Procedure (Amendment) Rules, 2019, G.N. No. 107 of 2019, Cap. 358,, r. 13 (Tanz.).
[86] Civil Procedure Code, Order VIII r. 14(3); High Court (Commercial Division) Procedure Rules, r. 22(2) (Tanz.).
[87] High Court (Commercial Division) Procedure Rules, r. 22(2) (a and b) (Tanz.).

warrant the use of more time in disposition of the matter, in defeating the essence of the court's issuance of an *ex-parte* judgement.[88]

In these ways, it is observed that the law does provide for the scrutinization, scheduling of time and events and control elements of C.M.S. for the presentation of pleadings step of civil cases. However, the law also has self-sabotaging provisions or ones capable of defeating interpretations or applications, a fact which points to the deficiencies in the essential elements of C.M.S. As such, there exists a critical need for a more systematic and predictable C.M.S. process in the High Court, underlining the importance of efficient, consistent scrutinization of pleadings, more stringent adherence to scheduled timelines and enhanced court control. These improvements are essential for ensuring competent, timely, and fair justice dispensation.

3. PRE-TRIAL EVENTS

When the pleadings are complete, the pre-trial events step follows.[89] The discussion of this step is divided into two Subsections. The subdivision is necessary to sufficiently capture the procedure of cases falling under each part. The first Subsection covers the procedure for ordinary civil, procedurally administered under the C.P.C., and commercial cases. Though such cases may range between those done under the general registries and those under specialised registries, their procedure is more alike than not. The second Subsection covers procedures for election and basic rights petitions. These two types of cases have specialised procedures under their respective legislation which set them apart, such that they cannot be discussed together with cases under the first part with the necessary clarity.

3.1. ORDINARY CIVIL AND COMMERCIAL CASES PRE-TRIAL EVENTS AND CONFERENCES

The C.P.C. points to this step being divided into four parts.[90] The first part of this step intends to address interim issue, such as applications or objections, the second explores

[88] *Id.* r. 15 (1 and 3), 23(1); High Court (Commercial Division) Procedure (Amendment) Rules, r. 14(a).
[89] Civil Procedure Code, Order VIII r. 17(1); High Court (Commercial Division) Procedure Rules, r. 22(1), r. 13; National Elections (Election Petitions) Rules, G.N. 782 of 2020, Cap.343, r. 15(1), 20(1), 21(1); Basic Rights and Duties Enforcement (Practice and Procedure) Rules, G.N. No. 304 of 2014, Cap. 3, r. 9(1).
[90] Civil Procedure Code, Order VIII r. 17(1 and 2), 18(1), 22(1) and 40(1).

the possibility of settlement, the third schedules the speed track of the case and the fourth frames the issues for determination and the events to follow.[91] The use of the phrases "pleadings are complete" and "conclusion of pleadings" before and after preliminary matters are addressed for the commencement of the first and third part respectively, supports their legally distinct existence.[92] Nevertheless, the first three parts can, in practice, be fused into the first P.T.C. while the fourth part forms the final P.T.C. For purposes of illustration of civil case steps in a linear manner, the final P.T.C. part shall be discussed as a separate step.

On the first part of the step where interim issues are to be determined, the Court determines applications or preliminary objections born by the pleadings on the outset.[93] The Court considers the pleadings and satisfy itself that there is no issue which needs attention at the earliest stage possible, an inference which embodies the scrutinization element of C.M.S.[94] By such scrutinization, the path towards justice can be abridged if the matter is concluded in the preliminaries.

This first part of the pre-trial events and conferences is scheduled to occur within eighteen days following the completion of pleadings.[95] The difference with commercial cases is that such a period includes working days only.[96] With a fourteen working day schedule it means that the first part of this step should take place within a minimum of eighteen calendar days.[97] Civil commercial justice and the establishment of the specialised division to that effect was and remains intended to provide a faster means for resolution of commercial disputes.[98] In areas such as this, where the timelines for commercial cases are longer than normal civil cases, the legal shortcoming in addressing the intention of having a specialised stream for commercial cases is exemplified.

During the conduct of this part under the C.P.C., if any preliminary matters arise, the Court has to hear the parties, for an unprescribed amount of time and thereafter issue a ruling within fourteen days.[99] By not prescribing the hearing duration, the determination

[91] *Id.*
[92] *Id.* Order VIII r. 17(1), 22(1).
[93] *Id.* r. 17(1 and 2); High Court (Commercial Division) Procedure Rules, r. 28(1).
[94] C.C.V., *supra* note 32.
[95] *See* Civil Procedure Code, Order VIII r. 17(1).
[96] *See* High Court (Commercial Division) Procedure Rules, r. 28(1).
[97] *Id.*
[98] Judiciary of Tanz., High Court of Tanz. Commercial Division (2010) 5, https://tanzlii.org/akn/tz/doc/jot-documents-and-guidelines/2010-10-31/historical-background-of-the-high-court-commercial-division-of-tanzania/eng@2010-10-31/source (Tanz); Robert V. Makaramba, *Administering Commercial Justice,* First Report Tanz. 36 (2010). *See also* Venance L. Ndalichako, Two Generations of Tanz. Financial Sector Reforms from 1991: From Washington Consensus to Institutional Economics 96-97 (Oct. 20, 2014) (Ph.D. dissertation, University of Bayreuth) (https://epub.uni-bayreuth.de/2913/1/PhD-Dissertation-Publication-2.pdf) (Ger.).
[99] Civil Procedure Code, Order VIII r. 17 (2).

of the preliminaries such as applications and objections, has the potential of consuming a lengthy period of time and ultimately delaying justice.

Again, it is not always the case that a ruling on preliminary matters is issued fourteen days after the conclusion of the hearing to that effect and in some case it runs over ninety days.[100] In the case of *Ibrahim Bakaki Nyakubiha v. Diamond Trust Bank Tanzania Ltd. & SUMA JKT Auction Mart,* a preliminary objection was fully heard by 11th April, 2019 but instead of its ruling being delivered fourteen days from the date of last hearing, the matter was adjourned to 18th June, 2019 for ruling.[101] Notwithstanding the fact that the scheduled date of ruling on the preliminary objection was already fifty-four days beyond the timeline provided by law, the ruling was again adjourned to 09th July, 2019 and further to 29th August, 2019 when it was delivered, the date of delivery being 116 days after the lapse of the fourteen days window for ruling issuance.[102] This points to a gap in the law's ability to enforce its timelines and laxity in control of proceedings.

The court control in the first part of the pre-trial events step is provided in the Court's ability to dismiss the suit on account of the Plaintiff's absence or strike out the defence by the Defendant's non-appearance.[103] The effect of such court control on this part of the proceedings is however limited by the possibility of any such order of dismissal or striking out being set aside or varied if a party so applies within thirty days or beyond, in the case of commercial cases, following the order.[104] While the law allows room for the Court's discretion on granting such an application, it is not precise on what would be a just cause for such setting aside or variation.[105]

After the conclusion of the first part with a ruling, the law would have it that the Court can either adjourn the matter to a future date or proceed immediately with a P.T.C. with the parties to explore settlement possibilities.[106] The exploration of possibilities for settlement envisages a review of the pleadings and a discussion between the Court and the parties to see areas where they can agree, concede or compromise to the effect of settling the case in part or in whole.[107] Doing so embodies the scrutinization element

[100] *See* Ibrahim Bakaki Nyakubiha v. Diamond Trust Bank Tanz. Ltd. & SUMA JKT Auction Mart, Land Case No. 10 of 2018 (HC Land Div.) (unreported) (Tanz.).
[101] Ibrahim Bakaki Nyakubiha v. Diamond Trust Bank Tanz. Ltd. SUMA JKT Auction Mart, Land Case No. 10 of 2018 (Dodoma HC sub-registry, adjourned April 03, 2023) (Tanz.).
[102] *See id*.
[103] *See* Civil Procedure Code, Order VIII r. 17(3); High Court (Commercial Division) Procedure Rules, 2012, G.N. No. 250 of 2012, Cap. 358, r. 28(2 and 3).
[104] *See* Civil Procedure Code, Order VIII r. 17(4); High Court (Commercial Division) Procedure Rules, r. 28 (4).
[105] *See* Civil Procedure Code, Order VIII r. 17(3); High Court (Commercial Division) Procedure Rules, r. 28 (2 and 3).
[106] *See* Civil Procedure Code, Order VIII r. 18(1 and 2); High Court (Commercial Division) Procedure Rules, r. 29 (1 and 2).
[107] *See* Civil Procedure Code, Order VIII r. 18(3); High Court (Commercial Division) Procedure Rules, r. 29 (5).

of C.M.S., in that the real issues in dispute are examined, crystalized and, in principal, measured whether they are worth any further consideration. Achieving partial settlement and only going forward with fewer issues to determine, is a way of reducing things which would consume the court's time unnecessarily, as proposed by the thesis of the T.O.C., and enhancing the chances of timely justice dispensation.[108]

Though the parties are to be notified on the date and time when this second part of the pre-trial events step will take place, the law does not provide a schedule of time as to when this part of the step should be conducted.[109] Further, the law does not provide for how long its conduct should take. These two facts can work against the pursuit of timely justice dispensation especially if this part of the step is conducted independently of the others.

Court control over this part of the pre-trial events step features in the power to compel parties' attendance and punish non-appearance. At the time when the pre-trial conference is to convene, the case can be dismissed or the defence can be struck out if the non-appearing party is the plaintiff or defendant respectively, have a judgement entered or any other order issued.[110] Default in appearance subsequent to an adjournment or non-compliance with any order issued attracts a dismissal, striking out of the defence or costs.[111] In this way, attendance of the parties can be ensured so as not to unduly delay the conduct of this part of the step.

The third part of the pre-trial events step is the first pre-trial settlement and scheduling conference.[112] This presents the parties with an avenue for further exploration of settlement opportunities through A.D.R. mechanisms such as negotiations, conciliation, mediation, arbitration or others not involving trial and the determination of the speed track the case would take.[113] What is covered in this part, though not expressly provided for, also requires a review of the pleadings and a consultation with the parties so as to ascertain the potential complexity of the case so as to schedule sufficient time and start off the pursuit of A.D.R. By such inherent review, the scrutinization element of C.M.S. is covered.

With the scheduling of time and events element of C.M.S., the C.P.C. provides that the first pre-trial settlement and scheduling conference is to be conducted within twenty-one days following the conclusion of pleadings.[114] Though the duration of this conference

[108] *See* Şimşit et al., *supra* note 9; Azaria et al., *supra* note 9.
[109] *See* Civil Procedure Code, Order VIII r. 19(1); High Court (Commercial Division) Procedure Rules, r. 30(1).
[110] *See* Civil Procedure Code, Order VIII r. 20(1) (a, b, c and d); High Court (Commercial Division) Procedure Rules, rr. 29(3), 31(1).
[111] *See* Civil Procedure Code, Order VIII r. 20(3), 21(a, b and c).
[112] *See id.* Order VIII r. 22(1).
[113] *See id*.
[114] *Id.* r. 21(1).

is not provided by law, practice shows that it usually takes one appearance before a judge and that the real problem is the compliance with this twenty-one-day timeline within which to conduct the first P.T.C.[115]

In the case of *Baraka Imanyi Tyenyi v. TANESCO,* the pleadings were marked complete on 18th August, 2011 and the first P.T.C. was originally scheduled for 03rd November, 2011 but was adjourned sixteen times for different reasons until 18th February, 2014 when it was conducted.[116] In the case of *Meet Singh Gurbax Singh v. Tanzania Railways Corporation,* pleadings were marked complete on 09th November, 2018 and the first P.T.C. was originally scheduled on 04th December, 2018 but was adjourned ten times to 16th October, 2019 when it was conducted.[117] In the case of *Monarch Investment Ltd v. CRDB Bank PLC & MEM Auctioneers and General Brokers Ltd* the pleadings were marked complete on 12th February, 2019 and the first P.T.C. was originally scheduled for 09th April, 2019 but was adjourned seven times for different reasons until 01st August, 2019 when it was conducted.[118]

In all of these cases not only were the original scheduled dates for first P.T.C. beyond the legislated twenty-one days period but also five months and twenty days after completion of pleadings was the shortest period of time within which first P.T.C. was conducted.[119] The cases exemplifies the interdependence between the law and practice in the efficacy of a C.M.S.

The first pre-trial settlement and scheduling conference presents an avenue for the scheduling of the events to follow in the case and the time such events would take. This is done by the determination of a speed track which would be adopted for the case between speed track I, II, III or IV for ten, twelve, fourteen and twenty-four months respectively.[120] However, commercial cases are to be determined within ten to twelve months from their commencement.[121] At this point, the law mandates the scheduling of the dates and time for each event to follow until the case is concluded.[122] It further

[115] Original case file records of *Monarch Inv. Ltd. v. CRDB Bank PLC & MEM Auctioneers & Gen. Brokers Ltd.*, Land Case No. 23 of 2018 (Accessed from the Mwanza High Court Registry - Tanz., Mar. 10, 2023); Original case file records of *Meet Singh Gurbax Singh v. Tanz. Ry. Corp.*, Land Case No. 68 of 2017 (Accessed from the Arusha High Court Registry - Tanz., Feb. 25, 2023); Original case file records of *Ibrahim Bakaki Nyakubiha v. Diamond Trust Bank Tanz. Ltd. & SUMA JKT Auction* Mart, Land Case No. 10 of 2018 (Accessed from the Dodoma High Court Registry - Tanz. Mar. 24, 2023).

[116] Baraka Imanyi Tyenyi v. TANESCO, Land Case No. 10 of 2008 (Mwanza HC sub-registry, dismissed Mar 24, 2022) (Unreported) (Tanz.).

[117] Original case file records of *Meet Singh Gurbax Singh v. Tanz. Ry. Corp.*

[118] Original case file records of *Monarch Inv. Ltd. v. CRDB Bank PLC & MEM Auctioneers & Gen. Brokers Ltd.*

[119] *Id.*

[120] *See* Civil Procedure Code [CAP. 33 R.E. 2019], s 22, Order VIII r. 22(3) (a, b, c and d).

[121] *See* High Court (Commercial Division) Procedure Rules, 2012, G.N. No. 250 of 2012, Cap. 358, r. 32(2).

[122] *See* Civil Procedure Code, Order VIII r. 22(2).

prohibits departure or amendment of the scheduling order save for what the Court may consider to be the interest of justice.[123]

However, the article found that cases which exceed their ordered speed track is common phenomena.[124] For instance, in the case of *Ibrahim Bakaki Nyakubiha v. Diamond Trust Bank Tanzania Ltd. & SUMA JKT Auction Mart,* speed track four for twenty-four months was selected on 08th June, 2020.[125] It expired on 07th June, 2022 and at that time hearing of the case had not started.[126] For unrecorded reasons, on 09th November, 2022 when the matter came for hearing, the speed track was extended by twelve months from 08th June, 2022 but up to 23rd March, 2023 when a review of the original case file in the Dodoma High Court Registry was conducted, the case was yet to be heard.[127]

In the case of *Meet Singh Gurbax Singh v. Tanzania Railways Corporation,* on 16th October, 2019 during the first P.T.C. speed track two for twelve months was selected, if mediation failed it was to revert to the trial Judge by 11th February, 2020 and judgement was to be delivered on or by 15th October, 2020.[128] Following failure of mediation, the case reverted back to the trial Judge and hearing was scheduled on 25th and 26th March, 2020. However, due to a successful prayer for amendment of the W.S.D. and non-appearance of the parties at different instances, hearing began on 14th December, 2020 which was beyond the twelve months mark of the selected speed track.[129] On 26th January, 2021 the speed track was enlarged by six months from 15th October, 2020 and the hearing continued.[130] The six months enlarged speed track expired on 14th April, 2021 at which time the Defendant's case was not closed.[131] The judgement, striking out the case for non-joinder of a necessary party, was delivered on 13th August, 2021 being ten months and four months beyond the original and enlarged speed track respectively.[132]

[123] *See id.* r. 23; High Court (Commercial Division) Procedure Rules, r. 32(2); High Court (Commercial Division) Procedure (Amendment) Rules, 2019, G.N. No. 107 of 2019, Cap. 358, r. 18.
[124] *See* Original case file records of *Ibrahim Bakaki Nyakubiha v. Diamond Trust Bank Tanz. Ltd. & SUMA JKT Auction* Mart, Land Case No. 10 of 2018 (Accessed from the Dodoma High Court Registry - Tanz. Mar. 24, 2023).
[125] *Id.*
[126] *See id.*
[127] *See id.*
[128] Original case file records of *Meet Singh Gurbax Singh v. Tanz. Ry. Corp.*, Land Case No. 68 of 2017 (Accessed from the Arusha High Court Registry - Tanz., Feb. 25, 2023).
[129] *See id.*
[130] *See id.*
[131] *See id.*
[132] *See id.*

On 18th February, 2014 in the case of *Baraka Imanyi Tyenyi v. TANESCO*, speed track two for twelve months was selected, for the case to be decided on or by 17th February, 2015.[133] By 19th February, 2015 hearing of the Plaintiff's case was onto the second Plaintiff's witness and on 20th April, 2015 the original speed track was enlarged by three months therefrom.[134] Though the defence case was closed and judgement was scheduled to be delivered before the lapse on such enlarged time, for reasons unclear in the records found in the Mwanza High Court Registry, the judgement was delivered on 28th June, 2016 being sixteen months eleven days and eleven months nine days beyond the original and enlarged speed track respectively.[135]

In the pursuit of timely justice dispensation, the article found that Judges of the Commercial Division, through internal administrative arrangements, cap the lifespan of commercial cases at eight months, that being four months before the maximum lifespan under the Commercial Division Rules.[136] The legally mandated and the self-imposed lifespan notwithstanding, at the close of 2022, the Commercial Division had 337 pending case, seventy-two of which had been pending for more than twelve months, forty-one being unfettered from adjudication and thirty-one being stayed by notices of appeal against interlocutory orders.[137] Again, thirty-six cases were pending for more than twenty-four months, being both backlogs as per the Commercial Division Rules and the judiciary's backlog policy.[138] At the close of 2023 the Commercial Division had 252 pending cases, forty-three of which had been pending for more than twelve months.[139] Out of the forty-three cases, nineteen stood pending as a result of there being a notice of appeal on interlocutory orders and twenty-four were unfettered for adjudication.[140] By 30th November, 2023, eleven out of the twenty-four cases were pending for judgement and thirteen were yet to be heard.[141]

These findings evidence the prevalent lapse of speed tracks before cases are determined. They show the interplay between law and practice, such that neither of the two is sufficient in ensuring timely justice dispensation without the other. Though the law provides for sanctions when a speed track lapses by the dismissal of a case or striking out of defence when the plaintiff or defendant is culpable for the lapse respectively, or

[133] Original case file records of *Baraka Imanyi Tyenyi v. TANESCO,* Land Case No. 10 of 2008 (Accessed from the Mwanza High Court Registry - Tanz., Mar. 10, 2023).
[134] *See id*.
[135] *See id*.
[136] *See* Interview by Rashid A. Pima & Mutandzi A. Matovelo with Cyprian P. Mkeha, J. in Charge, in High Court (Commercial Division), Dar es Salaam, Tanz. (Apr. 24, 2023) (Tanz.).
[137] Interview with Cyprian P. Mkeha, *supra* note 134.
[138] Chief Registrar (2023), *supra* note 22, at Chapter II – 6.
[139] Interview with Cyprian P. Mkeha, *supra* note 134.
[140] *Id*.
[141] *Id*.

costs for enlargement of the speed track, such sanctions are not always issued.[142] Again, enlargement of the speed track has consistently been more than half of the original speed track as allowed by law.[143] This points to the applied C.M.S. not being stringent enough to inhibit its abrogation or that it is vulnerable to human follies.

Court control element of C.M.S. over the pre-trial events and conferences step appears in the form of the Court's power to compel parties' attendance and penalise their abscondment.[144] The element is further exhibited by the precept generally prohibiting enlargement of the speed track, sanctioning parties conduct which leads to the lapse of the speed track before the case is determined and capping the allowable extension to only half the original speed track.[145]

Such provision of the element notwithstanding, court control over proceedings during and post this step has been found lacking in practice. The fact that commencement of the interim issues addressing part of this step and the first P.T.C. is usually past the legally scheduled fourteen or twenty-one days from completion and conclusion of pleadings respectively, indicate the possible insufficiency in control over proceedings exerted by the Court. This is confirmed by the often lapse of selected speed tracks and their respective enlargement period before case are determined.[146]

Such a lapse of time is due to a number of reasons but the highest-ranking reason across the example cases is the number and length of adjournments. In the case of *Baraka Imanyi Tyenyi v. TANESCO*, it was found in all the number of times it was called up to when judgement was delivered, it was adjourned fifty-six times.[147] Such adjournments were due to the absence of the both parties in four instances, absence of the Plaintiff thrice, absence of the Defendant four times, absence of the presiding Judge in nine instances, absence of

[142] Civil Procedure Code [CAP. 33 R.E. 2019], s 22, Order VIII r. 41 (a and b); Original case file records of *Meet Singh Gurbax Singh v. Tanz. Ry. Corp.*, Land Case No. 68 of 2017 (Accessed from the Arusha High Court Registry - Tanz., Feb. 25, 2023); Original case file records of *Baraka Imanyi Tyenyi v. TANESCO,* Land Case No. 10 of 2008 (Accessed from the Mwanza High Court Registry - Tanz., Mar. 10, 2023); Original case file records of *Ibrahim Bakaki Nyakubiha v. Diamond Trust Bank Tanz. Ltd. & SUMA JKT Auction* Mart, Land Case No. 10 of 2018 (Accessed from the Dodoma High Court Registry - Tanz. Mar. 24, 2023).

[143] Civil Procedure Code, Order VIII r. 41(c); Original case file records of *Meet Singh Gurbax Singh v. Tanz. Ry. Corp.*; Original case file records of *Baraka Imanyi Tyenyi v. TANESCO*; Original case file records of *Ibrahim Bakaki Nyakubiha v. Diamond Trust Bank Tanz. Ltd. & SUMA JKT Auction* Mart.

[144] Civil Procedure Code, Order VIII rr. 17(3), 20- 21; High Court (Commercial Division) Procedure Rules, 2012, G.N. No. 250 of 2012, Cap. 358, rr. 28(2), 29(3), 31(1).

[145] Civil Procedure Code, Order VIII rr. 23, 41; High Court (Commercial Division) Procedure Rules, r. 32(2); High Court (Commercial Division) Procedure (Amendment) Rules, 2019, G.N. No. 107 of 2019, Cap. 358, r. 18.

[146] Kondo Jumabungo v. Issa Ally Mangungu, Returning Officer Mbagala Constituency and Attorney General, Miscellaneous Civil Cause No. 1 of 2015 (HC) (unreported) (Tanz.); Original case file records of *Monarch Inv. Ltd. v. CRDB Bank PLC & MEM Auctioneers & Gen. Brokers Ltd.*, Land Case No. 23 of 2018 (Accessed from the Mwanza High Court Registry - Tanz., Mar. 10, 2023); Original case file records of *Meet Singh Gurbax Singh v. Tanz. Ry. Corp.*; Original case file records of *Ibrahim Bakaki Nyakubiha v. Diamond Trust Bank Tanz. Ltd. & SUMA JKT Auction* Mart; Original case file records of *Baraka Imanyi Tyenyi v. TANESCO*.

[147] Original case file records of *Baraka Imanyi Tyenyi v. TANESCO*.

both parties and the trial Judge or the Defendant and the Judge once respectively and absence of the Plaintiff and the Judge twice.[148] The number of adjournments in the case are further painted in a bad light when it is considered that the period between when the Plaintiff closed his case to when the Defendant closed its case took three appearances across three months between February and May, 2015.[149]

Cases discussed under this step show that an effective C.M.S. requires both sturdy self-executing laws which are elaborate in their provisions for the essential elements of C.M.S. and a robust adjudication practice which actively controls and sets the pace of case in line with the pursuit of timely justice. The C.M.S. applied in the High Court is observed to be lacking in the former prerequisite by partly providing for the elements and plagued with challenges which inhibit the latter prerequisite.

3.2. ELECTION AND BASIC RIGHTS PETITIONS PRE-TRIAL EVENTS

After the completion of pleadings, election and basic rights petitions do not follow the normal route under Order VIII of the C.P.C., instead they each adopt a distinct procedure during the pre-trial events. With election petitions, after completion of the pleadings exchange, the case is to be scheduled for hearing preceded by a Preliminary Hearing [hereinafter P.H.].[150] In conducting P.H., the Court queries the parties and examines the pleadings to ascertain disputed and undisputed matters of fact and law.[151] This exercise produces a memorandum of agreed facts, signed by the parties, their advocates and the judge, deemed to sufficiently prove such a fact.[152] Such a memorandum allows the court to ascertain matters in dispute and frame the issues for its determination.[153] The P.H. and framing of issues, in what is done and produced, embodies the scrutinization element of C.M.S. which allows the court to synthesise the convergence and divergence position between the parties and facilitate the conduct of a focused trial, necessary for timely justice dispensation.

With basic rights petitions, once the pleadings are complete, the matter is to be assigned to a single judge who would determine the competence of the petition by determining any preliminary objections raised and ensuring that it is neither frivolous nor vexatious.[154] Such a determination of competence, ideally ensures that petitions

[148] *Id.*
[149] *Id.*
[150] National Elections (Election Petitions) Rules, G.N. 782 of 2020, Cap .343, rr. 15(1) and 20(1).
[151] *Id.* r. 20 (1 and 2).
[152] *Id.* r. 20 (3, 4 and 5).
[153] *Id.* r. 21 (1).
[154] The Basic Rights and Duties Enforcement Act, Act No 5 of 2019, rr. 7(2) and 9(1).

which proceed to a three-judge bench meritoriously call for the Court's attention.[155] In effect, the three judges would never attend to the petition in any way before it is declare competent. Owing to the public interest nature of basic rights petitions, logic of this dual assignment of the petition -first to a single judge and on a finding of its competence, to a panel- can be found in the need to ensure their impartiality and insulate them against actual or perceived bias. Impartiality and freedom from perceived bias are key ingredients for justice.[156]

However, practice differs from the legally provided procedure, in that a petition is assigned to a three-judge panel from its inception and one of the judges is tasked to determine the competence or otherwise of the petition. While this practice does unify the two stages such that assignment would only be done once, it does mean that on a determination of competence, the judge who decided on competence would also be presiding over the main adjudication, a fact which can breed perceived biases and potential failure of justice. In this way, the practice may affect the gains that the competence scrutinization mechanism could have had of insulating the panel against such perceptions.

Practice further shows that some panels deliberate and have a collective input on the decision to be made by the single judge who is entertaining the competence question.[157] This can equally impute bias, albeit a perception of the same, on the panel if it also proceeds to hear the main petition once declared competent. Another example is from the case of *Omary Shabani Nyambu v. Permanent Secretary Ministry of Defence & Others.*[158] In this case the Appellant filed a basic rights petition in the High Court and following a preliminary objection, it was struck out for being incompetent. In that case, the preliminary objection was, in *coram*, heard by the panel but the ruling was written and signed by only one of the Judges. On appeal the Court of Appeal raised this discrepancy *suo moto,* the advocates representing the parties conceded that the High Court ruling was incompetent, however, the Court of Appeal did not determine it.[159] Though the appeal failed on another ground of objection, it does show the effect the practice can have on justice. Because the practice is not in alignment with the law, it

[155] *Id.* rr. 9(1) and 15.

[156] *See* Shaila Arora, *Independence of Judiciary in India*, 4 Int'l J. L. Mgmt. & Humanities 714 (2021); Vaishali Yadav, *Independence of Judiciary,* 30 Supremo Amicus 17 (2022) https://supremoamicus.org/wp-content/uploads/2022/06/Vaishali-Yadav.pdf (India); S*P Gupta v. Union of India & Anr* AIR 1982 SC 149 (1981) (India).

[157] Interview by Rashid A. Pima with Anonymised J. of the High Court, in Tunza Road, Ilemela, Mwanza, Tanz. (Apr. 18, 2023) (Tanz.).

[158] Omary Shabani Nyambu v. Permanent Secretary Ministry of Defence and Others, Civil Appeal No. 105 of 2015 (CA) (unreported) (Tanz.).

[159] *Id.* at 4.

takes a different shape subject to interpretation or discretion, leading to inconsistencies in the dispensation of justice.

The scheduling of time and events element is not clearly put in so far as election petition are concerned. Such cases are to be determined within a period of between twelve and up to eighteen months from their filing.[160] Other than this lifespan limit, the law does not specify the time period within which P.H. and the framing of issue is to be done. The provision that P.H. and the framing of issues are to be done "as soon as ..." and "after the conclusion of..." is not as precise a schedule of time and events not to allow the employ of discretion or, otherwise, inconsistencies in practice, both being unconstructive towards timely justice dispensation.

With basic rights petitions, the law is more precise and schedules the determination of competence to be within thirty days from when the pleadings are completed.[161] However, this timeline faces compliance challenges. In the case of *Ado Shaibu v. Honourable John Pombe Magufuli (President of the United Republic of Tanzania) & Others*, the petition was filed in 2018, pleadings were completed by 19th February, 2019 but the determination of competence, or in this case incompetence, was done on 20th September, 2019 being seven or six months and two days after completion of pleadings or the time limit within which to determine competence respectively.[162]

The power vested in the Court to inquire of the parties matters which are and are not in dispute and the power to frame issues to be determined have the effect of vesting control of election petition proceedings in the Court.[163] The control is extended by the power of the Court to proceed with such pre-trial events through virtual presence of any or all of the parties.[164] The law is however silent on the power of the Court to sanction the non-attendance of all or any other party at this step of the petition. Though the C.P.C. is applicable in election petitions, the wording of the relevant provision suggests its application during the hearing step and subsequent steps, not during the P.H. step.[165] An argument for the application of the C.P.C. to issue such sanctions can be made, but it would be up to interpretations which renders such application potentially subjective and inconsistent, possibilities which makes the power of the Court to control the proceedings with sanctions for non-attendance at this stage questionable.

[160] National Elections Act [R.E. 2015] Cap. 343, s 115 (2 and 5).
[161] The Basic Rights and Duties Enforcement Act, Act No 5 of 2019, r. 9(1).
[162] Ado Shaibu v. Honourable John Pombe Magufuli (President United Republic Tanz.) & Others, Misc. Civil Cause No. 29 of 2018 (HC), at 2, 33, 37 (unreported) (Tanz.).
[163] National Elections (Election Petitions) Rules, G.N. 782 of 2020, Cap. 343, rr. 20 and 21.
[164] *Id.* r. 15(3).
[165] *Id.* r. 25.

Court control over basic rights petitions proceedings, otherwise than under the C.P.C., is in the power of the Court to determine a petition's competence.[166] This power is tied to the Court's power to scrutinise the petition and it is the striking out of an incompetent petition which realises the essence of the scrutinization and control elements of C.M.S. which, in this case, have the effect of limiting the court workload. However, the power to determine competence has been observed to face challenges in being compliant to the timeline within which it is to be made.[167]

4. ALTERNATIVE DISPUTE RESOLUTION

A.D.R. is said to reduce discontentment and animosity between the parties and the overall time taken to determine or resolve disputes.[168] To harness such potential, the law references original civil cases to A.D.R. by way of negotiation, conciliation, mediation, arbitration or other mechanisms to that end a prerequisite for trial.[169] Any such mechanism which is a result of or flows from a case filed in court is referred to as court annexed A.D.R.[170] The parties are at liberty to choose any of those A.D.R. mechanisms to subject themselves to.[171] Choosing negotiation and conciliation or arbitration would mean that the parties would bear the costs of the procedure and make their own rules or abide by those in the second schedule of the C.P.C. in the case of arbitration.[172] On the other hand, choosing mediation or defaulting in choosing any mechanism, subjects the case to Court Annexed Mediation [hereinafter C.A.M.]. However, for commercial cases, C.A.M. is the only available and provided option.[173] While A.D.R., in itself, is viewed as a

[166] The Basic Rights and Duties Enforcement Act, Act No 5 of 2019, r. 9(1).
[167] *Ado Shaibu v. Honourable John Pombe Magufuli (President United Republic Tanz.)*.
[168] *See* Samia S. Hassan, President of the United Republic of Tanz., *Keynote Address at the 2024 National Law Day Celebrations*, YOUTUBE (Feb. 1, 2024), https://www.youtube.com/live/tHQlIk0n710?si=Wmu1R1pFtui4OWdD.
[169] Civil Procedure Code [CAP. 33 R.E. 2019], s 22, Order VIII r. 24(1); High Court (Commercial Division) Procedure Rules, 2012, G.N. No. 250 of 2012, Cap. 358, r. 33.
[170] *See* Rodney S. Webb, *Court-Annexed ADR – A Dissent*, 70 N.D. L. REV. 229, 230-231 (1994); Stephen M. Bundy, *Court-Annexed Alternative Dispute Resolution in the United States & Korea: A Comparative Analysis*, 42 SEOUL NAT'L U. L. 137, 144-147 (2001); Robert French, Chief Justice of the High Court of Australia, Perspectives on Court Annexed Alternative Dispute Resolution, Address during the Law Council of Australia — Multi-Door Symposium, 6, 10 - 11 (July 27, 2009) (transcript available at https://www.hcourt.gov.au/assets/publications/speeches/current-justices/frenchcj/frenchcj27july09.pdf) (Austl.); Zakayo N. Lukumay, *A Reflection on Court - Annexed Mediation in Tanz.*, 1 LST L. REV. 51 (2016) https://lstjournal.lst.ac.tz/index.php/files/article/download/4/4/12 (Tanz.); Kariuki Muigua, *Court Annexed ADR in the Kenyan Context* 1 (2022), http://kmco.co.ke/wp-content/uploads/2018/08/Court-Annexed-ADR.pdf (last accessed July 24, 2024) (Kenya).
[171] Civil Procedure Code, Order VIII rr. 25, 35, 36.
[172] *Id.* at rr. 25(8), 35, 36.
[173] High Court (Commercial Division) Procedure Rules, r. 33.

plausible way to ensure timely and affordable justice dispensation by way of settlement,[174] this Section explores how the elements of C.M.S. are reflected in and assist the effectiveness of this compulsory form of A.D.R. practice.

Scrutinization as an element is not expressly provided by law in this step. However, the duties of a mediator imply a responsibility to acquaint oneself with the case to be mediated, its salient issues and areas of divergence and convergence between the parties.[175] The perusal of the statement of issues, pleadings and any other documents identifying issues in dispute and the parties' positions, delivered to the mediator informs the mediator of the real dispute and enables one to participate in constructive discussions with the parties on options for resolution of the dispute.[176] This duty, though impliedly, embodies the scrutinization element of C.M.S. Arguably, an express provision of the duty to scrutinise documents in C.A.M. and other court-annexed A.D.R. would crystalize this duty, ensure its non-discretionary application and enhance the potential for their efficacy.

The scheduling of time and events element of C.M.S. is reflected in the timelines set by the law which are elaborate. When a case is to go for court-annexed A.D.R. and C.A.M. is the mechanism preferred, the parties have a fourteen-day window to appoint a mediator or otherwise have one appointed by the Court.[177] These fourteen days run from when the pleadings are complete. However, the point at which pleadings can be considered complete, in this context, is subject to interpretation as to whether it refers to the completion of pleadings under Order VIII Rule 17(1) or Rule 22(1) of the C.P.C. Again, the period within which appointment of a mediator by the Court should be done if the parties so choose or default in appointing one is not indicated. This leaves a period of time unaccounted for to the potential detriment of timely justice dispensation.

[174] Buxton D. Chipeta, *Civil Procedure in Tanz.: A Students Manual* 2 (LawAfrica 2014); Louise Otis & Eric H. Reiter, *Mediation by Judges: A New Phenomenon in the Transformation of Justice*, 6 Pepp. Disp. Resol. L. J. 351, 361-62 (2006); Fernando V. Luiz, *Designing a Court-Annexed Mediation Program for Civil Cases in Brazil: Challenges & Opportunities Brazil: Challenges & Opportunities*, 15 Pepp. Disp. Resol. L. J. 1, 3 (2015).

[175] Civil Procedure Code, Order VIII rr. 26(1) (b) and (2) (d and f); High Court (Commercial Division) Procedure Rules, r. 38(1) (b) and (2) (d); *see also* Kenny Aina, *The Judge as Mediator: Not for the Faint Hearted*, Kluwer Mediation Blog (Nov. 22, 2011), http://mediationblog.kluwerarbitration.com/2011/11/22/the-judge-as-mediator-not-for-the-faint-hearted/.

[176] Civil Procedure Code, Order VIII r. 25(4); Hamis T. Hamisi, *Court-Annexed Mediation in Tanz.: Successes, Challenges & Prospects*, 9 Int'l J. Innovative Rsch. Advanced Stud. 5, 9 (2022) https://www.ijiras.com/2022/Vol_9-Issue_11/paper_2.pdf (India).

[177] Civil Procedure Code, Order VIII r. 25(1 and 2).

In the event the Court appoints a mediator, it is to notify the parties of such appointment within seven days following the appointment.[178] Within seven days from appointment, the mediator is to schedule and notify the parties of the first mediation session which must be within twenty-one days of the mediator's appointment.[179] While the mediation can take different shapes and have as many sessions as may be required, the whole mediation process is not to exceed thirty days from the date of the first mediation session and for commercial cases the length is fourteen days.[180] After the conclusion of C.A.M., be it by the execution of a settlement agreement, failure of the mediation or lapse of the thirty days, the mediator is to remit the records to the trial court within forty-eight hours of such conclusion.[181]

The drafting of the fourteen and thirty-days respective limits for C.A.M. length does not suggest the intention that it should be extendable because such discretion for extension is not specifically provided therein as compared to the provision for the length of conciliation or negotiation.[182] Further, the lapse of the fourteen or thirty-days period is one way through which C.A.M. comes to a natural end.[183] This stern position on the time period for C.A.M. confirms the scheduling of time and events element of C.M.S. in the A.D.R. step. However, this intention can be defeated by the departure from or amendment of the scheduling order and invocation of the enlargement of time or inherent powers section of the law.[184] The use of any such provisions has the potential of increasing the length of C.A.M. period, beyond thirty days, a possibility which can affect timely justice dispensation.

The case of *Monarch Investment Ltd. v. CRDB Bank PLC & MEM Auctioneers and General Brokers Ltd.* is an example of how use of such discretion to extend the C.A.M. length adds the total length of a case's lifespan.[185] In this case the first mediation session was on 07th August, 2019 and it was adjourned ten times before it was marked to have failed.[186] Out of the ten adjournments, four were by consent of the parties, two due to the trial Judge's absence when extension of time was applied, one by the parties' and mediator Judge's absence.[187] Notwithstanding such adjournment by consent of the parties or that by 06th September, 2019 the original thirty-day period had lapsed, on 04th November, 2019 the

[178] *Id.* r. 25(3).
[179] *Id.* r. 25(5); High Court (Commercial Division) Procedure Rules, r. 33.
[180] Civil Procedure Code, Order VIII r. 32; High Court (Commercial Division) Procedure Rules, r. 40.
[181] Civil Procedure Code, Order VIII rr. 33 and 34; High Court (Commercial Division) Procedure Rules, r. 41.
[182] Civil Procedure Code, Order VIII r. 37.
[183] *Id.* r. 33 (c); High Court (Commercial Division) Procedure Rules, r. 41 (d).
[184] Civil Procedure Code, rr. 93 and 95, Order VIII r. 23.
[185] Original case file records of *Monarch Inv. Ltd. v. CRDB Bank PLC & MEM Auctioneers & Gen. Brokers Ltd.*, Land Case No. 23 of 2018 (Accessed from the Mwanza High Court Registry - Tanz., Mar. 10, 2023).
[186] *Id.*
[187] *Id.*

Plaintiff applied and was granted a forty-day extension period to 13th December, 2019.[188] The mediation was finally marked failed on 26th February, 2020 being beyond five months and twenty days or 173 days from the first mediation session.[189] Non-compliance with the thirty-day rule and the forty-day extension added 173 days in the total lifespan of the case.

Another example of the lapse of inordinate lengths of time during C.A.M. can be drawn from the case of *Stephen Ndaro Mbeba & 2 Others,* where though the pleadings were complete on 19th November, 2019 the first appearance to the mediator Judge was on 10th December, 2019 at which date it was adjourned to 11th February, 2020.[190] Other than the 11th of February, 2020 being over sixty days from the first appearance before the mediator, on that date the mediation was adjourned six more times before it was marked to have failed on 23rd July, 2020.[191] In the first four adjournments, the matter was not called before the mediator Judge but rather the Deputy Registrar and at times and Acting Deputy Registrar who could not proceed with mediation. The period between when the pleadings were marked complete on 19th November, 2019 to the finalisation of C.A.M. on 23rd July, 2020 is eight months and five days or 248 days.[192]

If 10th December, 2019 is taken to be the first mediation session because the matter came before the mediator Judge, then the time between that date to when C.A.M. was concluded in seven months and fourteen days or 227 days. If the appearance on 10th December, 2019 is not taken to be the first appearance for mediation, any such future mediation date was not supposed to be beyond twenty-one days from the date of the mediator Judge's appointment date.[193] At any rate, this case exemplifies the non-compliance with legal time schedules on account of administrative challenges, such as the non-availability of the mediator Judge for unknown reasons.

In so far as other court-annexed A.D.R. mechanisms are concerned, the law is not elaborate in scheduling their events and timelines. It does not provide the time within which an award should be issued in a court-annexed arbitration but does indicate the Court's discretion to prescribe such time and extend it as deemed fit.[194] Again, the law provides for a thirty-day timeline for the completion of negotiation or conciliation counted from the date the case is so referred to either.[195]

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[188] *Id.*
[189] *Id.*
[190] Stephen Ndaro Mbeba & 2 Others, Probate and Administration of Estate Cause No. 1 of 2019 (Unreported) (Tanz.).
[191] *Id.*
[192] *Id.*
[193] Civil Procedure Code, Order VIII r. 25(5).
[194] *Id.* at r. 37, Second Schedule r. 8.
[195] *Id.* at r. 37.

In the event the parties choose any other court-annexed A.D.R. other than C.A.M., the risk of delay can be greater owing to the deficiencies in the scheduling of time and events element and open discretion for extension of time, whose effects can be inferred from those observed with C.A.M.[196]

Court control in court-annexed A.D.R. is mostly wanting in negotiation, conciliation and arbitration save for when the Court has to extend or deny the extension of the timeline within which to conclude settlement efforts or issue an award.[197] With C.A.M., control by the Court is embodied in the mediator' duty to facilitate communication between the parties in pursuit of an amicable solution, conduct joint and or separate sessions and propose possible settlement terms.[198] Further, court control features in the way a party's non-attendance of C.A.M. is penalised.[199] If attendance of the parties in mediation is by representation, the representative is to have the requisite authority to settle the matter.[200] When non-attendance is without good cause, the mediator is to remit the case file to the trial judge who can dismiss the plaint, strike out the defence if the defaulting party is the plaintiff or defendant respectively, or make an order for costs or any other order as deemed fit.[201]

Though provided for, this power for control over C.A.M. is not always exercised by the Court for reasons which are not always availed in the records.[202] Further, in as much as the law requires the parties attending C.A.M. have authority to settle, it does not sanction those who attend without such authority or means to communicate with persons with such authority.[203] This was found to be one reason behind the failure of C.A.M.[204] Again, though the possibility of dismissal of the case, striking out of the defence or costs can arguably have a deterrence effect against non-appearance, the possibility to have such orders vacated can dilute the purpose for which the orders were made.[205]

[196] Monarch Inv. Ltd. v. CRDB Bank PLC MEM Auctioneers Gen. Brokers Ltd., Land Case No. 23 of 2018 (Mwanza HC sub-registry, settled Feb 09, 2021) (Unreported) (Tanz.).
[197] Civil Procedure Code, Order VIII r. 37, Second Schedule r. 8.
[198] *Id.*at Order VIII r. 26(1) (b) and (2) (a, b, e and f); High Court (Commercial Division) Procedure Rules, 2012, G.N. No. 250 of 2012, Cap. 358, r. 38 (1) (b) and (2) (a, b, e and f).
[199] Civil Procedure Code, Order VIII r. 29; High Court (Commercial Division) Procedure Rules, r. 36; High Court (Commercial Division) Procedure (Amendment) Rules, 2019, G.N. No. 107 of 2019, Cap. 358, r. 20.
[200] Civil Procedure Code, Order VIII rr. 27 and 28; High Court (Commercial Division) Procedure Rules, r. 35.
[201] Civil Procedure Code, Order VIII r. 29; High Court (Commercial Division) Procedure Rules, r. 36; High Court (Commercial Division) Procedure (Amendment) Rules, r. 20.
[202] Monarch Inv. Ltd. v. CRDB Bank PLC & MEM Auctioneers & Gen. Brokers Ltd., Land Case No. 23 of 2018 (Mwanza HC Registry) (Tanz.); Meet Singh Gurbax Singh v. Tanz. Ry. Corp., Land Case No. 68 of 2017 (Arusha HC Registry) (Tanz.).
[203] Civil Procedure Code, Order VIII r. 28; High Court (Commercial Division) Procedure Rules, r. 35.
[204] Interview by Matovelo MA with Anonymised J. of the High Court in Kivukoni Front, Ilala CBD, Dar es Salaam, Tanz. (Dec. 21, 2023) (Tanz.).
[205] Civil Procedure Code, Order VIII r. 30; High Court (Commercial Division) Procedure Rules, r. 37; High Court (Commercial Division) Procedure (Amendment) Rules, r. 21.

5. FINAL PRE-TRIAL CONFERENCE

The failure of court-annexed A.D.R. to produce a settlement, moves the case further into the final P.T.C. step.[206] In this step the Court frames issues and schedules future events of the case including date or dates for hearing.[207] Though the law does not expressly require the Court to scrutinise the case at this stage of its life, the Court's duty to frame issues, schedule future events and dates for hearing implies sufficient comprehension of the dispute enabling the judge to determine what is to be decided, the number of days required for examination of witnesses and what possible intervening circumstances may occur. In this way, the C.M.S. applied in the High Court embodies the scrutinization element.

Apart from the final P.T.C. being used to schedule time and future events of the case, the law also provides for the conduct of final P.T.C. within fourteen days from the failure of court-annexed A.D.R.[208] In practice however, compliance is wanting. In *Meet Singh Gurbax Singh v. Tanzania Railways Corporation*, C.A.M. was marked to have failed on 26th November, 2019 but final P.T.C. was conducted on 11th February, 2020 being seventy-six days later.[209] In the case of *Ibrahim Bakaki Nyakubiha v. Diamond Trust Bank Tanzania Ltd. & SUMA JKT Auction Mart,* C.A.M. was marked to have failed on 26th October, 2020 but final P.T.C. was conducted on 19th April, 2021 being 174 days after the failure of court-annexed A.D.R.[210]

In the case of *Rashid Ally Mamu v. National Microfinance Bank PLC*, C.A.M. was marked to have failed on 19th August, 2021 and final P.T.C. was to be conducted on 25th August, 2021 being within the fourteen-days period.[211] However, the same was adjourned on that scheduled date and further on subsequent dates until 09th May, 2022, when the Plaintiff was granted leave to file an amended plaint, dragging the case back to the pleadings exchange stage and a second C.A.M. attempt.[212] The amendment of the plaint, the redo of the pleadings exchange and mediation steps, together with a slew of other reasons like absence and transfer of presiding Judge, made it such that, at the time of review of the original case file on 24th March, 2023, the final P.T.C. was yet to be conducted.[213] In the case of *Monarch Investment Ltd. v. CRDB Bank PLC & MEM Auctioneers*

[206] Civil Procedure Code, Order VIII r. 40(1).
[207] *Id.*
[208] *Id.* r. 40(3).
[209] Meet Singh Gurbax Singh v Tanz. Ry. Corp., Land Case No. 68 of 2017 (Arusha HC sub-registry, struck out Aug 13, 2021) (Unreported) (Tanz.).
[210] Original case file records of *Ibrahim Bakaki Nyakubiha v. Diamond Trust Bank Tanz. Ltd. & SUMA JKT Auction* Mart, Land Case No. 10 of 2018 (Accessed from the Dodoma High Court Registry - Tanz. Mar. 24, 2023).
[211] Rashid Ally Mamu v. National Microfinance Bank PLC, Land Case No. 4 of 2019 (Dodoma HC sub-registry, adjourned Mar 10, 2023) (Tanz.).
[212] *Id.*
[213] *Id.*

and General Brokers Ltd., C.A.M. was marked to have failed on 26th February, 2020, while it was presented to the trial Judge on the same day and with no reasons indicated in the records, final P.T.C. was adjourned to and conducted on 02nd April, 2020 being thirty-five days after the failure of court annexed A.D.R.[214]

This non-compliance with the fourteen-days timeline within which to conduct final P.T.C., for reasonable or unreasonable grounds as the case may be, can be attributed to there being no sanctions to the parties or the judges for the same. Again, it further exemplifies the co-dependence between the law and the practice in ensuring the efficacy of the applied C.M.S.

The control element of C.M.S. during the final P.T.C. step is covered in the Court's power to schedule future events of the case, frame issues to be decided and setting dates for trial.[215] In this way, the Court has the power to set and control the pace of the case, something which is considered vital in achieving timely justice dispensation.[216] Such provision notwithstanding, the applied C.M.S. faces compliance challenges, in that the judges do not appear active in minimising the number of adjournments or other circumstances which defeat the purpose of clothing them with powers to control proceedings during this step.[217]

6. HEARING

Hearing of civil cases is an important milestone in the pendency of a case when the rubber meets the road. It is at this step where the parties present their evidence and arguments on the merit of the case in efforts of securing a favourable verdict.[218] Hearings feature the presentation of opening statements, examination of witnesses, tendering of evidence,

[214] Original case file records of *Monarch Inv. Ltd. v. CRDB Bank PLC & MEM Auctioneers & Gen. Brokers Ltd.*, Land Case No. 23 of 2018 (Accessed from the Mwanza High Court Registry - Tanz., Mar. 10, 2023).

[215] Civil Procedure Code [CAP. 33 R.E. 2019], s 22, Order VIII r. 40(1).

[216] David C. Steelman et al., Caseflow Management: The Heart of Court Management in the New Millennium (National Center for State Courts, 2004) 3, 12 & 25 http://ncsc.contentdm.oclc.org/cdm/singleitem/collection/ctadmin/id/1498/rec/2, Accessed 22 February 2024.

[217] Original case file records of *Rashid Ally Mamu v. Nat'l Microfinance Bank PLC*, Land Case No. 4 of 2019 (Accessed from the Dodoma High Court Registry – Tanz., Mar. 24, 2023); Original case file records of *Monarch Inv. Ltd. v. CRDB Bank PLC & MEM Auctioneers & Gen. Brokers Ltd.*; Original case file records of *Meet Singh Gurbax Singh v. Tanz. Ry. Corp.*, Land Case No. 68 of 2017 (Accessed from the Arusha High Court Registry - Tanz., Feb. 25, 2023); Original case file records of *Ibrahim Bakaki Nyakubiha v. Diamond Trust Bank Tanz. Ltd. & SUMA JKT Auction* Mart, Land Case No. 10 of 2018 (Accessed from the Dodoma High Court Registry - Tanz. Mar. 24, 2023).

[218] Black's Law Dictionary, *supra* note 1, at 2108.

arguments and closing submissions.[219] With civil suits, most of the procedure for hearings is covered and provided for under the C.P.C. As such, the discussion is based on the position thereunder. However, relevant special procedures, provided for particular types of civil cases are highlighted for a more wholesome discussion. Contextualised by actual practice, this Section again discusses the hearing of civil suits and how the elements of C.M.S. are covered by law.

The scrutinization element of C.M.S. during the hearing step features in the Court's power to examine the pleadings, documents presented, the parties, their advocates and even other witnesses so as to comprehend the real issue in dispute and frame or amend issue for its determination.[220] Admittedly, the framing of issues can be covered during the final P.T.C. step but the framing of issues during the hearing step presents a secondary opportunity to do just that, in the event issues were not framed during the final P.T.C. or where it was reserved to be done with the hearing step.[221]

Other than this manner of scrutinization which is secondary and potentially incidental, the element is not otherwise provided for. Though the law provides for the use of witness statements and provides for their requisite form and content, scrutinization for their conformity and sanctions for inconformity at filing is not provided for by law.[222] Without scrutinization at filing, it necessarily means that any defects would be dealt with by way of objection to the tendering of such witness statement on an issue which could have been addressed at filing. An exception, by way of necessary implication can be construed for witness statement in commercial cases.[223] The use of the words "or any other documents" provides a blanket covering for all documents under the Commercial Division Rules, to the extension of including witness statements filed there under.[224] Read together with Rule 19(2) of the Commercial Division Rules, such witness statements are to be scrutinised at filing and rejected if not in conformity with the requirements of the law.

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[219] Civil Procedure Code, Order VIII r. 30; High Court (Commercial Division) Procedure Rules, 2012, G.N. No. 250 of 2012, Cap. 358, r. 45(1).

[220] Civil Procedure Code, Order XIV rr. 1(5), 3, 4 and 5.

[221] *Id.* Order VIII r. 40(1); High Court (Commercial Division) Procedure Rules, r. 48(a) (amended by High Court (Commercial Division) Procedure (Amendment) Rules, 2019, G.N. No. 107 of 2019, r. 24); Original case file records of *Baraka Imanyi Tyenyi v. TANESCO,* Land Case No. 10 of 2008 (Accessed from the Mwanza High Court Registry - Tanz., Mar. 10, 2023) (in this case framing of issue was not done during the final P.T.C. Instead an order for the parties to file proposals of the issues was made and when the matter came for hearing, four issues were framed).

[222] Civil Procedure Code, at Order XVIII r. 2, 3 & 4 amended by Civil Procedure Code (Amendment of the First Schedule) Rules GN No. 761 of 2021, r. 3 (Tanz.); High Court (Commercial Division) Procedure Rules, r. 50 amended by High Court (Commercial Division) Procedure (Amendment) Rules, r. 26.

[223] High Court (Commercial Division) Procedure Rules, rr. 19(1 and 2), 66 (2) amended by High Court (Commercial Division) Procedure (Amendment) Rules, r. 35.

[224] High Court (Commercial Division) Procedure Rules, r. 66(2).

As for the scheduling of time and events element of C.M.S., the laws governing the procedure for various civil cases are silent on when the hearing should start after the completion of final P.T.C. or pre-trial events. Such laws generally also do not provide for how long the hearing should take. The scheduling of when the hearing should start or how long it should take has been left in the discretion of the registrar in some circumstances and the court in others.[225] It is arguable that any such discretion would be mindful of the respective speed track within which the matter is to be decided. However, the use of discretion to determine timelines breeds inconsistency which threatens the chances for timely justice dispensation. Generally, in this step, the applied C.M.S. lacks the scheduling of time and events elements.

As an exception and by convenient or purposive interpretation, it can be argued that the law schedules the time within which basic rights petitions are to be determined, that being ninety days from when a panel of three judges is assigned.[226] The use of a convenient or purposive interpretation is necessary to argue for the provision of the scheduling of time and events element in this way because, in practice, the panel of three judges is assigned the case before the determination of competence is done.[227] By such practice, the point from which the ninety-day period accrues is unclear. If the ninety-day period runs from the date of assignment of the petition to a panel, which in practice happens before determination of competence, the thirty days within which to determine competence form part of the ninety days.[228] As a result, following a determination of competence, the panel will have sixty days to determine the petition on merit.

Another interpretation would be that, the ninety-day period accrues after the determination of competence. If so and if the determination complies with the time period, being that the petition was assigned to the panel from the start, then the determination would have been done 120 days from the date of assignment. The described timeline uncertainty results from the gulf between law and practice. Though the assignment of the panel from the outset does do away with the need for a second assignment after the determination of competence, it inadvertently births the law *vis-à-vis* practice gulf. The disparity notwithstanding, the law does provide for a ninety-day period within which to determine the petition. Because the determination of competence is aimed to address all preliminary matters, the ninety-day determination period can be argued to be the time within which the petition ought to be heard and

[225] Civil Procedure Code, Order VIII rr. 22(2), 40(1); National Elections (Election Petitions) Rules, G.N. 782 of 2020, Cap.343, at r. 15(1), 15(1 and 2).
[226] Basic Rights and Duties Enforcement (Practice and Procedure) Rules, G.N. No. 304 of 2014, Cap. 3, r. 15(2).
[227] *See discussion on Election & Basic Rights Petitions Pre-Trial Events at page 98.*
[228] Basic Rights and Duties Enforcement (Practice and Procedure) Rules, r. 9(1).

decided. Through this exception, the law provides for the scheduling of time and events element of C.M.S.

Court control of proceedings at the hearing stage features in a number of ways. The use of witness statements or affidavit proof in basic rights petitions in lieu of examination in chief at the Court's option allows it to abridge the length of the hearing as such examination would not take the time it would have had it been *viva voce*.[229] At hearing, the Court has the power to dismiss the case for the plaintiff's non-appearance or hear the suit in the absence of the defendant or respondent.[230] The power of the Court to summon and consequently issue a warrant for the arrest of a defaulting witness, speaks to the Court's power to ensure that witnesses do not become a cause of delay by their reluctance to appear as summoned.[231]

Another mechanism of control is the limitations against adjournments. The law requires that once hearing commences it should continue consecutively until it is complete.[232] However, the law allows adjournments beyond one day from the day the adjournment is allowed on exceptional reasons to be recorded.[233] Such reasons do not include circumstances considered to be in the control of the party(ies), engagement of an advocate in any other court than the Court of Appeal or illness or any other inability of an advocate unless the party can prove their inability to procure another advocate in time.[234] With commercial cases, any such adjournment can attract court fees and costs.[235] In the event where the adjournment is on the Court's accord, it ought not to exceed thirty days.[236]

The limitations on adjournments appear to be geared towards enhancing swift determination of matters. However, this intention is undercut by the fact that the law neither limits how long adjournments on account of the parties should be, as compared

[229] Civil Procedure Code, Order XVIII rr. 2, 3 and 4 as amended by Civil Procedure Code First Schedule Amendment Rules, *supra* note 220, r. 3; National Elections (Election Petitions) Rules, r. 22(1); High Court (Commercial Division) Procedure Rules, r. 48(b) amended by High Court (Commercial Division) Procedure (Amendment) Rules, 2019, G.N. No. 107 of 2019, Cap. 358, r. 24; Basic Rights and Duties Enforcement (Practice and Procedure) Rules, r. 15(3).

[230] Civil Procedure Code, Order IX rr. 2, 5 – 8; National Elections (Election Petitions) Rules, rr. 30(1), 31.

[231] Civil Procedure Code, Order XVI r. 10(3).

[232] Civil Procedure Code, Order XVII r. 1(3) (a); National Elections (Election Petitions) Rules, r. 28; High Court (Commercial Division) Procedure Rules, r. 46 (1).

[233] Civil Procedure Code, Order XVII r. 1(3) (a); National Elections (Election Petitions) Rules, r. 28; High Court (Commercial Division) Procedure Rules, r. 46(2) amended by High Court (Commercial Division) Procedure (Amendment) Rules, worr. 24.

[234] Civil Procedure Code, Order XVII r. 1(3) (b, c and d); High Court (Commercial Division) Procedure Rules, rr. 46 (2) (b, c and d) amended by High Court (Commercial Division) Procedure (Amendment) Rules, r. 23.

[235] High Court (Commercial Division) Procedure Rules, r. 46(2) (a) amended by High Court (Commercial Division) Procedure (Amendment) Rules, r. 23.

[236] Civil Procedure Code, Order XVII r. 1(3) (f); High Court (Commercial Division) Procedure Rules, r. 46(2) (e) amended by High Court (Commercial Division) Procedure (Amendment) Rules, r. 23.

to the thirty days cap for adjournments on the Court's accord, nor does it limit the number of adjournments per case.[237] Further, the power to adjourn cases generally, without indicating the following appearance date otherwise referred to as *sine die*, reduce the efficacy of the limitations against adjournments such that cases may remain pending indefinitely unless they are dismissed after having been pending for six or twelve months, for commercial and other civil cases respectively, or otherwise struck out after having been pending for two years.[238]

These two facts work to make adjournments, for any reason, a notorious cause of delay. This article found that adjournments are considered to be one of the leading causes of delay among litigants.[239] Out of forty-two litigant respondents who had cases pending before the High Court during the data collection period, twenty-one being fifty percent of such respondents identified adjournments as the cause of delay of their cases.

Adjournments

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	1	21	50.0	100.0	100.0
Missing	System	21	50.0		
Total		42	100.0		

Table 2: Response of Litigants to a Questionnaire Question on the Main Cause of Delay.

The limitation against adjournments during the hearing stage and the whole case at large is wanting in its implementation. For instance, in the case of *Meet Singh Gurbax Singh v. Tanzania Railways Corporation*, which was filed in 2017 and determined in 2021, there were a total of forty-three adjournments through that period of time, seven of which were during the hearing step.[240] Each adjournment had a varying length and the total length of all adjournments was 1,401 days.[241] On average then, each adjournment added 32.59 days to the total length of the case. During the hearing step, the seven adjournments added up to a total length of 155 days, such that each adjournment during the hearing step added 22.1 days to the total length of the hearing step.[242] Up to when

[237] Civil Procedure Code, Order XVII r. 1(3) (f); High Court (Commercial Division) Procedure Rules, r. 46(2) (e) amended by High Court (Commercial Division) Procedure (Amendment) Rules, r. 23.
[238] Civil Procedure Code, Order XVII rr. 2, 4 and 5; High Court (Commercial Division) Procedure Rules, r. 47(2) (e) amended by High Court (Commercial Division) Procedure (Amendment) Rules, r. 23.
[239] *See infra Table 2.*
[240] Meet Singh Gurbax Singh v Tanz. Ry. Corp., Land Case No. 68 of 2017 (Arusha HC sub-registry, struck out Aug 13, 2021) (Unreported) (Tanz.).
[241] *Id.*
[242] *Id.*

the original case file was reviewed for purposes of this article, the case of *Rashid Ally Mamu v. National Microfinance Bank PLC*, which was filed in 2019 was still pending and had not reached the hearing stage.[243] Through its pendency to 24th March, 2023, the date of review, it had been adjourned fifty-one times for a total length of 1,488 days which is on average equivalent to 29.18 days per each adjournment.[244] These cases are by no means the only ones with such numbers and lengths of adjournments, they are merely indicative of the perils of adjournments to timely justice dispensation, perils attributable to the laws permissiveness with and passive management of adjournments.

With commercial cases, court control is further exhibited in the power to limit written and oral submission. While written submissions ought not to exceed ten typed pages, oral submissions are to last for twenty minutes save for when prior leave for an extended length is granted.[245] This caps the lengths of documents and submissions judges would be required to read or listen to, an outcome which reduces their workload.

7. CIVIL APPEALS, REVISIONS, AND OTHER APPLICATIONS

Appeals and revisions give the High Court the opportunity to confirm the legal and factual propriety of the findings of a subordinate court.[246] While appeals have to be prompted by a discontented party, a revision proceeding can be a result of an application by a party or commenced on the Court's own motion.[247] In this Section, revisions shall be taken to include labour revision and applications shall be taken to include all applications which can be made or managed under the C.P.C., Commercial Division Rules, Labour Court Rules and the Judicial Review Procedure Rules. After the exchange of necessary pleadings and documents, appeals, revisions and application go forward to hearing on preliminary points of objection if any, or otherwise on merit.

[243] Rashid Ally Mamu v. National Microfinance Bank PLC, Land Case No. 4 of 2019 (Dodoma HC sub-registry, adjourned Mar 10, 2023) (Tanz.).
[244] *Id.*
[245] High Court (Commercial Division) Procedure Rules, 2012, G.N. No. 250 of 2012, Cap. 358, rr. 19(1), 65(3), 66(1 and 2) amended by High Court (Commercial Division) Procedure (Amendment) Rules, 2019, G.N. No. 107 of 2019, Cap. 358, r. 35.
[246] Civil Procedure Code [CAP. 33 R.E. 2019], s 70(1), 74(1), 79(1), Order XXXIX r. 1(1); Magistrates Court Act [CAP. 11 R.E. 2019], 1984, Act No 2 of 1984, s 25(1) (b), 31(1), 43(3), 44(1) (b); High Court (Commercial Division) Procedure Rules, r. 69 amended by High Court (Commercial Division) Procedure (Amendment) Rules, r. 37.
[247] Civil Procedure Code, s 70 (1), 74 (1), 79 (1), Order XXXIX r. 1 (1); Magistrates Courts Act, s 25 (1) (b), 31 (1), 43 (3), 44 (1) (b); High Court (Commercial Division) Procedure Rules r. 69 as amended by High Court (Commercial Division) Procedure (Amendment) Rules r. 37.

Like the hearing of original cases, the High Court during this step is called upon to entertain the arguments of the parties on the grounds of appeal, revision, or subject of the application. In this step, the law does not mandate the presiding Judge to scrutinize the case presented for hearing for propriety, but it does afford the Judge power to scrutinize the sufficiency of evidence taken by the trial or first appellate court before determining the appeal and if deemed insufficient proceed to remand it for the further collection of evidence by the trial or first appellate court.[248] This manner of scrutinization can have the effect of leaving the appeal pending while additional evidence is being taken, something which can add to the time taken to determine the appeal.

By extrapolation, the practice and precedents that a preliminary objection can be raised and adjudicated at any time, can be argued to afford the Court the power to consider a *suo moto* or party raised objection at the hearing step and thus covering the scrutinization element of C.M.S.[249] In as much as, through preliminary objections, the Court can confirm the propriety of the case without dealing with it on merit, the presiding Judge is not duty bound to initiate such a scrutinization mechanism *suo moto* but rather as a matter of discretion. As such, this manner of scrutinization is discretionary and potentially subject to inconsistent application on the part of the Court and dependent upon the parties to the case, all which feed the conclusion of insufficiency of the law in providing for the scrutinization element during this step.

The coverage of the scheduling of time and events element is lacking on this step. As much as the law provides for the scheduling for the date of hearing of appeals, revision, and other applications, it neither provides for the time period within which such hearing ought to commence nor the duration it is to take.[250] This is arguably contributory to the existence of backlog appeals, those which have been pending for more than twenty-four months.[251]

The control element of C.M.S. during this step features in the power of the Court to dismiss appeals without hearing the respondent where, after hearing the appellant, the appeal is wholly unmeritorious.[252] This power allows the Court to control

[248] Civil Procedure Code, Order XXXIX rr. 24, 25.

[249] Alex Chuma Kapama v. Registered Trustees of Jumuiya ya Maendeleo KIJICO and Others, Miscellaneous Civil Application No. 38 of 2023, at 11 (HC) (unreported) (Tanz.); Zaidi Baraka and Others v Exim Bank Tanz. Ltd., Civil Appeal No. 194 of 2016, at 11 (CA) (unreported) (Tanz.).

[250] Civil Procedure Code, Order XXXIX rr. 12 (1 and 2), 14(1), 16(1 and 2); Labour Court Rules G.N. No. 106 of 2007, rr. 20(4), 32(1, 2 and 3).

[251] *See examples* D.B Shapriya & Co. v. Mek One Gen. Trader & Another, Civil. Appeal No. 197 of 2016 (CA) (unreported) (Tanz.); William Godfrey Urassa v. TANAPA Arusha, Miscellaneous Civil Appeal No. 12 of 2000 (HC) (unreported) (Tanz.) (which was decided in 2009, approximately nine years after it was filed); Muro Inv. Co. Ltd. v. Alice Andrew Mlela, Civ. Appeal No. 72 of 2015 (HC) (unreported) (Tanz.) (which was decided in 2018, approximately three years after it was filed); Tanz. Breweries Ltd. v. Jonathan Karaze, Civ. Appeal No. 13 of 2012 (Mwanza HC sub-registry, decided Oct 09, 2015) (Unreported) (Tanz.).

[252] Civil Procedure Code, Order XXXIX r. 16(1 and 2); Labour Court Rules, r. 32(3 and 4).

proceedings before it and abridge the time taken to determine appeals. Notwithstanding the law's provision of the control element in this manner, the article found that judges do not control proceedings in this way even when they see no merit in the appeal and often hear the respondent regardless.[253]

It was argued that judges normally proceed to hear the respondents, even when the appeal appears unmeritorious after hearing the appellant, so as to afford each party the right to be heard.[254] Though this reason may appear valid and without harm to any party, it does diminish the essence of the law's provision of such means of control by using the Court and the parties' time to hear a response which would not change anything in the unmeritorious appeal. As a result, the length of the hearing can be elongated unnecessarily to the detriment of the pursuit of timely justice dispensation.

Other means of control features in the power of the Court to hear appeals *ex-parte* when the respondent fails to appear or dismiss the appeal when the appellant fails to appear when the matter is called for hearing.[255] Though a dismissal or an *ex-parte* proceeding or decision in this instance can be set aside on good cause, the power to control proceedings in this way can deter laxity in the parties' conduct of their cases.[256] The mandate to take additional evidence as necessary during the appeal stage, instead of remanding the appeal to the trial court for the collection of further evidence, does afford the Court another means of control of the proceedings before it in efforts to reduce reasons for delay.[257]

8. JUDGMENT

Having survived all preliminary hurdles of the case and completed the hearing step, cases proceed to the judgement step where the Court deliberates on the pleadings, arguments and evidence and against the applicable law so as to produce a reasoned decision on the rights and liabilities of the parties involved.[258] In this article, this step includes judgments

[253] Interview by Mutandzi A. Matovelo with Salma Maghimbi, J. in Charge, High Court Dar es Salaam Sub-Registry, in Kivukoni Front, Ilala CBD, Dar es Salaam, Tanz. (Apr. 25, 2023) (Tanz.); Interview by Rashid A. Pima & Mutandzi A. Matovelo with Julian L. Masabo, J. in Charge, High Court Dodoma Sub-Registry, in Tunza Road, Ilemela, Mwanza, Tanz. (Apr. 18, 2023) (Tanz.).

[254] Interview by Rashid A. Pima Mutandzi A. Matovelo with John R. Kahyoza, J. in Charge, High Court Manyara Sub Registry, in Bagara, Babati CBD, Manyara, Tanz. (Mar. 01, 2023) (Tanz.).

[255] Civil Procedure Code, Order XXXIX r. 17(1 and 2); Labour Court Rules, r. 32 (5 and 6).

[256] Civil Procedure Code, Order XXXIX rr. 19, 21; Labour Court Rules, r. 32 (7 and 9).

[257] Civil Procedure Code, Order XXXIX rr. 23, 25, 27, 28.

[258] Civil Procedure Code, Order XX rr. 1, 3A, 4; Order XXXIX r. 30, 31.

which are a result of a case having been heard on merit on original or appellate jurisdiction and rulings which follow the hearing of revisions, applications or preliminary objections.

Nothing in the law places a duty on the Court to scrutinise the propriety of the case before it at this stage when the Court is called to issue its decision. However, by virtue of what the Court is expected to produce, that is, a reasoned decision which measures the facts by the yardstick of the law, the Court inevitably scrutinises the case, its propriety in form and content, the relevant evidence and confine itself to the issue to be decided.[259] This implicit expectation for scrutinization tallies with the R.T. of C.M.S. However, it is mostly linked with dispensing justice than it is to reducing the time taken to complete the judgement stage.[260] Be that as it may, in this way, the scrutinization element of C.M.S. features in the judgement step.

The timing for issuance of the Court's decision covers the scheduling of time and events element of C.M.S. With this step, the law generally requires that all decisions of the Court be issued within ninety days from closure of the hearing.[261] With commercial cases, this time period is reduced to sixty days for judgments and thirty days for rulings.[262] By such provisions, the law clearly provides for the scheduling of time elements. However, compliance with these timelines is not absolute and though there have been instances where judges are summoned before the Judge's Disciplinary Committee on account of judgments which have been pending for over ninety days, no disciplinary sanction has ever been meted out against any judge.[263] Further, this article found that, fifty-three judgments out of 1,000 judgments of the High Court submitted to the Tanzania Law Report Board for review before publication in 2023, were delivered beyond ninety days.[264] The presence of such judgments again exemplifies the non-absolute compliance with the ninety-days rule.

[259] Rutanjaga Mathias and Another v. Elias Emmanuel, Criminal Appeal No. 5 of 2016 (HC), at 11 (unreported) (Tanz.); Nimbo Yusufu @ Kebumba v. Ngusa Sambai, Miscellaneous Land Appeal No. 20 of 2020 (HC), at 9 (unreported) (Tanz.); Gipson S. Kisanga v. Atrisiana Karisia, Land Appeal No. 36 of 2019 (HC), at 7 (unreported) (Tanz.); Lenatus Mageko @ Mageko v. Samwel George, PC. Criminal Appeal No. 26 of 2020 (HC), at 4 (unreported) (Tanz.); Yesse Mrisho v. Sania Abdul, Civil Appeal No. 147 of 2016 (CA), at 11 (unreported) (Tanz.); Tanz. Petrol. Dev. Corp. v. Mussa Yusuph Namwao and 23 Others, Miscellaneous Land Application No. 4 of 2023 (HC Land Div.) at 10 (unreported) (Tanz.); Kaiza Katamba Mwalugaja v. Obby Sikuanguka Mwampaja & Another, Civ. Appeal No. 7 of 2022 (HC), at 9 (unreported) (Tanz.).

[260] Yesse Mrisho v. Sania Abdul; Kaiza Katamba Mwalugaja v. Obby Sikuanguka Mwampaja & Another.

[261] Civil Procedure Code, r. 28.

[262] High Court (Commercial Division) Procedure Rules, 2012, G.N. No. 250 of 2012, Cap. 358, r. 67(1) amended by High Court (Commercial Division) Procedure (Amendment) Rules, 2019, G.N. No. 107 of 2019, Cap. 358, r. 36.

[263] Interview by Rashid A. Pima & Mutandzi A. Matovelo with Wilbert M. Chuma, Chief Registrar of the Judiciary of Tanz., in Kivukoni Road, Ilala CBD, Dar es Salaam, Tanz. (May 03, 2023) (Tanz.).

[264] E-mail from Kifungu Kariho Mrisho, Head, Libr. Serv. Judiciary Tanz., to Mustapher M. Siyani, Principal J. High Court (Feb. 22, 2024, 17:05 EAT) (on file with principal author).

Potential contributing factors behind the delay in delivering decisions include laxity on the part of the Court and the lack of effective sanctions for the non-compliance. Such potential contributing factors are reflected in the findings on the causes of case delays where, improper case management by judges was identified by 218 (68.1%) and weakness of the law, was identified to be the third main cause of delay by fifty-nine (18.4%), all out of 320 respondents.[265]

Improper CMS by Judges

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	1	218	68.1	100.0	100.0
Missing	System	102	31.9		
Total		320	100.0		

Table 3: Table 3. Response of all Interviewees and Questionnaire Respondents to the Question on the Main Cause of Delay.

Weakness of the Law

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	1	59	18.4	100.0	100.0
Missing	System	261	81.6		
Total		320	100.0		

Table 4: Table 4. Response of all Interviewees and Questionnaire Respondents to the Question on the Main Cause of Delay.

After the coming of the code of conduct and ethics for judicial officers, the delay in issuing decisions, beyond ninety, sixty or thirty days, is a misconduct warranting disciplinary measure.[266] Though there exist cases whose decisions have exceeded that allocated time, the article found the means to compel judges to comply with the timeline before its lapse are lacking and the means to sanction such non-compliance is not as effective in preventing it.[267] It was found that, while being summoned to appear before the disciplinary committee prompted some summoned judges to complete their pending

[265] *See infra Table 3 and 4.*
[266] Code of Conduct & Ethics for Judicial Officers, 2020, G.N. No. 1001 of 2020, Cap. 237, r. 4(5) (Tanz.).
[267] Interview Wilbert M. Chuma, *supra* note 261.

decisions before the allocated appearance date and in as much as the summoning led to the issuance of the decision, such summoning or consequent issuance did not change the fact the decision had already been pending for more than the allowed time.[268] From this situation, a void in the applied C.M.S.'s ability to prevent delayed issuance of decisions is observed.

Usually during this step, the Court deliberates on the case in the absence of the parties. As such, it has absolute control over the step save in rare instances where the Court, during deliberations deems fit to recall the parties to address it on a particular issue or the parties request the Court's audience on account of compelling circumstances.[269] In both possibilities, the Court exercises full discretion. The described nature of this step affords the Court the necessary control over it and provides for that element of C.M.S.

Instances where the Court has to recall the parties to address it on issue observed during the composition of the judgement, show the insufficiency in the provision and execution of the scrutinization element of case management at all steps preceding the judgement step.[270] Nevertheless, taking cognizance of such issues does exemplify the scrutinization element in the judgement step. However, unlike in the preceding steps where such scrutinization would have facilitated timely justice dispensation, at the judgement step, it only facilitates justice dispensation. Because the case had to be heard to finality before scrutinization was done, it cannot change the time spent entertaining the case. This is to say, the scrutinization of cases at the judgement step, does not expedite the case as much as it may lead to a just decision.

CONCLUSION

With civil justice, the C.M.S. applied in the High Court does not provide for the scrutinization element in most scenarios. Registrars, as the admitting officers, are under no explicit duty to carry out scrutinization of documents at their admission and judges can only discretionarily, secondarily, and incidentally carry out such scrutiny. This has been observed to allow the existence and administration of defective cases which go up

[268] *Id.*

[269] Bagamoyo District Council v. Koiya Gen. Supply, Civil Appeal No. 346 of 2021(HC), at 4 (unreported) (Tanz.); Barclays Bank Tanz. Ltd. v. Adam Mhagama & 4 Others, Application for Lab. Revision No. 07 of 2023 (HC Lab. Div.) at 7, 9 (unreported) (Tanz.); Damas Nyakia (administrator of the Estate of Late Maningi Magesa) v. Athony Joseph Mugeta, Land Appeal No. 11 of 2019 (HC), at 2 (unreported) (Tanz.).

[270] Frank Masangya v. Adventina Valentine Msonyi (Administratrix of estate of late Buhacha Baltazar Kichinda), PC. Civil Appeal 10 of 2022 (HC), at 4, 7 (unreported) (Tanz.); Shukuru Mohamed Saidi and Others v. Athumani Mohamed Manyanga, PC. Civil Appeal No. 149 of 2019 (HC), at 3 (unreported) (Tanz).

to the judgement writing stage unnoticed. It further consumes the Court's time unnecessarily consequently delaying the dispensation of justice. Overarchingly, this element is incidental in its execution, done at secondary or advanced steps of a case and mostly done subject to the discretion of the officer at hand.

In areas where the scheduling of time and events is provided, the possibility for endless extensions defeat the essence of its existence and contribute to delayed justice dispensation. Again, where the timeline for the conduct of a particular case step is covered by law, the applied C.M.S. is incapable of preventing non-compliance by judges nor sufficiently sanctioning the same. By not providing for the commencement and duration period for various steps, the law does not encourage proactiveness of the associated actors but fosters the discretionary conduct of such steps and the potential delay as they are subjected to the officer's calendar.

The control of cases by the dismissal for non-appearance or issuance of *ex-parte* orders is watered down by the potential for future reversals which would make such means of control ineffectual and increase the total time consumed to determine the case. The delayed disposition of cases has been linked to improper management of cases appears permissive or at least passive with the control over adjournments. The law is culpable for the effects of adjournments by not limiting the number and length of adjournments. On account of reasonable or flimsy grounds, adjournments have been demonstrated to significantly add to the time cases consume to their final determination. In areas where the Court is afforded absolute control over proceedings, deliberate, inadvertent, or ignorant abdication of such control has been observed.

The captured findings illustrate the system's lack or at the very least insufficiency in the inclusion of the essential elements necessary for C.M.S.' efficacy. Further, situations where the law does not provide means to prevent or sanction its abrogation and the prevalence of advertent or inadvertent non-compliance with the law exemplify legal and practical challenges facing C.M.S. Together, these findings prove the article's hypotheses and offer an explanation behind the persistence of case delays in the High Court despite the adoption of legal and administrative case management framework, that the C.M.S. applied in the High Court lacks essential elements for and faces legal and practical challenges impeding timely civil justice dispensation.

To address this, amendments of the C.P.C., M.C.A., Commercial Division Rules, Labour Court Rules, Election Petition Rules, Judicial Review Procedure Rules and B.R.A.D.E. Rules are recommended so as to fully capture the essential elements of C.M.S. on every step the respective civil cases administered thereunder go through. The amendments should focus on curbing any and all unnecessary adjournments, curing any

delay caused by misuse of discretion and address as many circumstances as possible so that each scenario that presents itself in the pendency of a civil case, novel or otherwise, can be remedied by the law. The possibility of extension of provided or ordered timelines should be reviewed to see the best way to identify and accommodate apt circumstance for extension while inhibiting abuse of such extensions.

Apart from legal reform, the findings make improvement of civil justice adjudication practice necessary. Training of judges, state attorneys, advocates, other stakeholders of the civil justice and the public at large on the essence of C.M.S. and their respective roles can work to enhance the overall efficacy of the applied system. Further, the increase in the number of judges together with systematic and consistent enforcement of the law can assist in ensuring timely civil justice dispensation.

Bottlenecks to its effective performance notwithstanding, C.M.S. remains a tool capable of ensuring or at the very least enhancing the possibility of timely civil justice dispensation. Its potential is promising and is worth the necessary investment if the vision for timely and accessible justice for all is to be achieved. In line with the collective thesis of the guiding theories, the efficacy of the applied C.M.S. is greatly dependent on the comprehensive inclusion of the essential elements in the law and the adoption of conforming practices.

DATA AVAILABILITY

The research datasets underlying the results presented in this manuscript have been deposited in Zenodo at https://doi.org/10.5281/zenodo.14892944.

APPENDICES

APPENDIX I: MIXED QUESTIONNAIRE FOR JLAS

RESEARCH QUESTIONNAIRE FOR JUDGES LAW ASSISANTS

I am Mustapher Mohamed Siyani, a PhD (Law) Researcher from the University of Dodoma, School of Law. I am currently undertaking a study titled; 'Examining Legal and Practical Challenges Affecting Case Management System on Timely Justice Dispensation in the High Court of Tanzania.' I kindly request your participation by responding to this questionnaire. The information obtained will be used for academic purposes only. High degree of confidentiality will be ensured. Feel free to add information you think might be useful to this study.

1. How long have you been a Judge's Law Assistant? (Tick where appropriate)

   One year

   Two years

   Three years

   More than three years

2. Have you attended any training on case management?

   .....

   .....

   .....

3. What do you understand by case management system and what do you think is the purpose of case management in the High Court of Tanzania?

   .....

   .....

   .....

4. What do you consider to be the roles of a Judge's Law Assistants in case management in the High Court of Tanzania?

   .....

   .....

   .....

5. According to your understanding of case management system, can you please name elements of case management?

   .....
   .....
   .....

6. Do you think all important elements of case management are observed during trial of cases by the High Court of Tanzania? Kindly Explain.

   .....
   .....
   .....

7. In your opinion, has case management system in the High Court of Tanzania ensured timely dispensation of justice?

   .....
   .....
   .....

8. What do you consider to be legal challenges facing the case management system applied in the High Court of Tanzania

   .....
   .....
   .....

9. Are there any practical challenges facing the case management system applied in the High Court of Tanzania? Please mention them.

   .....
   .....
   .....

10. If you have listed challenges in question 8 and 9, do you think the challenges affect timely dispensation of justice in the High Court of Tanzania? Please explain.
    .....
    .....
    .....

11. What do you consider to be the main cause of case delays among the following? Tick only one reason of your choice.

a) Adjournment of the case without valid reasons

b) Insufficient number of Judges

c) Complexity of cases

d) Ignorance of the law

e) Improper management of cases.

f) Weakness of the law

g) Any other reason (mention)

.....

APPENDIX II: MIXED QUESTIONNAIRE FOR RMAS (DODOSO LA UTAFITI KWA WASAIDIZI WA KUMBUKUMBU)

DODOSO LA UTAFITI KWAAJILI YA WASAIDIZI WA KUMBUKUMBU

Mimi ni Mustapher Mohamed Siyani, Mtafiti wa Shahada ya Uzamivu (PhD) kutoka Chuo Kikuu cha Dodoma, Shule ya Sheria. Ninafanya utafiti unaoitwa; 'Uchunguzi wa Changamoto za Kisheria na Kiutekelezaji Zinazoathiri Mfumo wa Uratibu na Usimamizi wa Mashauri Katika Utoaji Haki kwa Wakati Kwenye Mahakama Kuu ya Tanzania.' Ninaomba kwa heshima ushiriki wako katika dodoso hili. Taarifa zitakazopatikana zitatumika kwa madhumuni ya kitaaluma tu. Kiwango cha juu cha usiri kitahakikishwa. Jisikie huru kuongeza maelezo ambayo unafikiri yanaweza kuwa muhimu kwa utafiti huu.

1. Je, umekuwa Msaidizi wa Kumbukumbu Mahakama Kuu kwa muda gani? (Weka alama ya tiki unapoona inapofaa)

   Mwaka mmoja

   Miaka miwili

   Miaka mitatu

   Zaidi ya miaka mitatu

2. Je, unaelewa nini kuhusu mfumo wa uratibu na usimamizi wa mashauri na unafikiri ni nini madhumuni ya mfumo husika?

   .....
   .....
   .....

3. Nini majukumu ya Msaidizi wa kumbukumbu katika mfumo huo?

   .....
   .....
   .....

4. Kwa uzoefu wa kazi yako, nani ana jukumu la kupanga tarehe ya kesi na anazingatia nini katika kutimiza jukumu hilo?

   .....
   .....
   .....

5. Kati ya yafuatayo, nini unafikiri ni chanzo kikubwa cha ucheleweshaji wa kesi katika Mahakama Kuu ya Tanzania? Tiki moja wapo.

    a) Uhairishwaji wa kesi wa mara kwa mara bila sababu za msingi
    b) Uchache wa majaji
    c) Wingi wa mashahidi
    d) Uelewa mdogo wa elimu wa sheria
    e) Usimamizi hafifu wa mashauri
    f) Udhaifu wa sheria
    g) Sababu nyingine (itaje)

    .....

6. Je, umewahi kupata mafunzo yoyote kuhusu mfumo wa uratibu na usimamizi wa mashauri mahakamani?

    .....
    .....
    .....

7. Ikiwa jibu lako kwenye swali No. 6 ni "NDIO" Je unadhani ni kwa kiasi gani mfumo wa uratibu na usimamizi wa mashauri, kama unavyotumiwa na Mahakama Kuu ya Tanzania, umesaidia katika utoaji wa haki kwa wakati?

    .....
    .....
    .....

APPENDIX III: MIXED QUESTIONNAIRE FOR LITIGANTS (DODOSO LA UTAFITI KWA WADAAWA NA WASHTAKIWA WENYE MASHAURI YENYE UMRI MREFU MAHAKAMANI)

DODOSO LA UTAFITI KWA WADAAWA NA WASHTAKIWA WENYE MASHAURI YENYE UMRI MREFU MAHAKAMANI

Mimi ni Mustapher Mohamed Siyani, Mtafiti wa Shahada ya Uzamivu (PhD) kutoka Chuo Kikuu cha Dodoma, Shule ya Sheria. Ninafanya utafiti unaoitwa; 'Uchunguzi wa Changamoto za Kisheria na Kiutekelezaji Zinazoathiri Mfumo wa Uratibu na Usimamizi wa Mashauri Katika Utoaji Haki kwa Wakati Kwenye Mahakama Kuu ya Tanzania.' Ninaomba kwa heshima ushiriki wako katika dodoso hili. Taarifa zitakazopatikana zitatumika kwa madhumuni ya kitaaluma tu. Kiwango cha juu cha usiri kitahakikishwa. Jisikie huru kuongeza maelezo ambayo unafikiri yanaweza kuwa muhimu kwa utafiti huu.

1. Je, shauri lako liko Mahakamani kwa muda gani tangu lilipofunguliwa (Weka alama ya tiki unapoona inapofaa)

   Baina ya Miaka mitano na Kumi

   Zaidi ya Miaka Kumi

2. Kesi yako ni ya aina gani?

   .....
   .....
   .....

3. Kama umewahi kujaribu njia mbadala za kutatua mgogoro wako kimahakama, nini unafikiri kilisababisha njia hizo kushindikana?

   .....
   .....
   .....

4. Unadhani nini kimepelekea shauri lako kuchelewa kusikilizwa au kumalizika?

   .....
   .....
   .....

5. Je unaelewa nini kuhusu mfumo wa uratibu na usimamizi wa mashauri mahakamani?

   .....
   .....
   .....

6. Kati ya yafuatayo, nini unafikiri ni chanzo kikubwa cha ucheleweshaji wa shauri lako? (Chagua mojawapo kwa kuweka alama ya tiki)

   a) Uhairishwaji wa kesi wa mara kwa mara bila sababu za msingi
   b) Uchache wa majaji
   c) Uzito wa shauri
   d) Uelewa mdogo wa elimu wa sheria
   e) Usimamizi hafifu wa mashauri
   f) Mapungufu ya kisheria
   g) Sababu nyingine (itaje)

      .....

7. Je, huwa unapewa sababu za kuhairishwa kwa shauri lako?

   .....
   .....
   .....