

The Violation of Rule Against Bias in The Administration of Justice for The Breach of Professional Code of Conduct Committed by The Accredited Reconciliators, Negotiators, Mediators and Arbitrators in Tanzania

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Abstract

This paper examines the evolution of alternative dispute resolution (ADR) in Tanzania, tracing its origins from traditional methods used by African societies that emphasized community cohesion before colonialism. The British colonial rule introduced a formal legal system in 1920 through the Tanganyika Order in Council, which integrated customary law with English common law. After independence, Tanzania enacted several laws, including the Civil Procedure Code, mandating the referral of civil actions to ADR methods such as negotiation, conciliation, mediation, and arbitration. The study utilized both qualitative and quantitative methods, including document analysis, structured interviews, and surveys of legal practitioners and ADR experts to gather data on their experiences and perceptions of ADR practices. The analysis involved thematic coding of qualitative data and statistical evaluation of survey responses to identify trends and challenges within the ADR framework. Despite the growing significance of ADR, there was a lack of regulatory frameworks governing practitioners before 2021, raising concerns about professional misconduct. Recent amendments to the Civil Procedure Code introduced additional ADR modes, but challenges regarding practitioner accreditation and ethical standards persist. This paper highlights the need for comprehensive regulatory measures to enhance the integrity and effectiveness of ADR practices in Tanzania.

Keywords: Administration Of Justice; Alternative Dispute Resolution and Breach of Professional Code

1. Introduction

Before colonialism, African societies employed traditional dispute resolution methods that emphasized harmony and community cohesion. These customary laws remain prevalent in many African countries today, highlighting the enduring significance of traditional mechanisms in resolving conflicts. Traditional dispute resolution is recognized as the oldest form of conflict management in Africa, often addressing disputes that formal legal systems may overlook (Merry, 1988). In Tanzania, the roots of alternative dispute resolution (ADR) can be traced back to pre-colonial times, where each culture had its own mechanisms for resolving conflicts (Moshi, 2006).

The introduction of British colonial rule in Tanzania in 1920 marked a significant shift in the legal landscape with the enactment of the Tanganyika Order in Council. This legislation established a formal court system based on English common law while allowing for the application of customary law in certain circumstances (Mwalusanya, 2000). The British government recognized the importance of customary practices in achieving substantial justice, thereby integrating traditional dispute resolution within the colonial legal framework (Moshi, 2006). This duality laid the groundwork for the coexistence of formal and informal dispute resolution methods in post-colonial Tanzania.

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Following independence, Tanzania enacted several laws aimed at enhancing alternative dispute resolution procedures to alleviate the backlog of cases in the formal court system. The Civil Procedure Code, particularly Order VIII Rule 24, mandates that civil actions be referred to negotiation, conciliation, mediation, or arbitration before trial (Civil Procedure Code, 2002). This legal framework reflects the Tanzanian Constitution's commitment to timely justice and the promotion of amicable dispute resolution (Constitution of the United Republic of Tanzania, 1977). As ADR practices evolved, they became integral to the legal system, adapting to the changing social, economic, and cultural landscape of the country.

Despite the growing importance of ADR, prior to 2021, there was a lack of regulation governing the conduct of practitioners in Tanzania. The absence of laws and disciplinary mechanisms raised concerns about professional misconduct among ADR practitioners (Kibanda, 2019). Historically, arbitration was governed by the Arbitration Ordinance of 1931, which was later revised into the Arbitration Act of 2002, yet neither provided a comprehensive code of conduct for arbitrators (Arbitration Act, 2002). The establishment of the Tanzania Institute of Arbitrators (TIArb) in 1997 aimed to promote commercial dispute resolution, but it too lacked formal regulations for arbitrators' conduct (TIArb, 1997).

The Civil Procedure Code underwent significant revisions in 2019, introducing additional modes of ADR, including conciliation and negotiation (Civil Procedure Code, 2019). Despite these advancements, the Code did not establish accreditation requirements for mediators or arbitrators, limiting the scope for private practitioners in the ADR landscape (Kibanda, 2019). The amendments aimed to enhance the efficiency of dispute resolution processes, making it mandatory for courts to refer civil cases to ADR methods (Civil Procedure Code, 2019). As Tanzania continues to develop its ADR framework, the establishment of ethical standards and regulatory measures will be crucial for ensuring the integrity and effectiveness of dispute resolution practices in the country.

2. Research Methodology

This study employs a mixed-methods approach to investigate the evolution of alternative dispute resolution (ADR) in Tanzania. The study begins with an extensive document analysis of historical and legal texts to trace the origins and development of ADR practices from pre-colonial times through British colonial rule and into the post-independence era. To gain deeper insights into contemporary ADR practices, structured interviews were conducted with legal practitioners and ADR experts, focusing on their experiences, perceptions, and the challenges they face within the existing framework. Additionally, surveys were distributed to a broader group of legal professionals to quantify their views on ADR's effectiveness and regulatory needs. The qualitative data obtained from interviews was thematically coded, while statistical analysis was performed on survey responses to uncover patterns and identify common issues. This comprehensive methodological approach allowed for a robust exploration of both historical context and current practices, ultimately emphasizing the pressing need for strengthened regulatory measures to address gaps in accreditation and ethical standards in ADR within Tanzania.

3. Laws Governing Accredited Reconciliators, Negotiators, Mediators and Arbitrators In Tanzania

Before 2021, there were no laws governing the practices of reconciliators, negotiators, mediators, and arbitrators in Tanzania, resulting in the absence of a Code of Conduct and disciplinary measures for breaches of conduct. In 2020, the Arbitration Act was repealed and replaced, introducing new regulations known as the Arbitration (Rules of Procedure) Regulations. The amended Arbitration Act also revised the Civil Procedure Code, mandating that alternative dispute resolution (ADR) must be conducted before any court proceedings, as outlined in Section 10A. This section defines "bona fide steps" to resolve disputes and provides various methods for parties to engage in ADR, including negotiation and mediation.

The amendments to the Civil Procedure Code introduced mandatory accreditation for practitioners in ADR, as specified in Section 64B. This section prohibits individuals from practicing as reconciliators, negotiators, mediators, or arbitrators for a fee unless they are accredited. The Minister is tasked with establishing an accreditation system and maintaining a register of accredited practitioners. Additionally, Section 88 of the Arbitration Act reinforces the requirement for arbitrators to be registered under this system. Practicing without accreditation is deemed an offense, punishable by fines or imprisonment, as outlined in Section 64B(4).

The role of the Registrar, appointed within the Ministry responsible for legal affairs, is crucial in overseeing the accreditation process. The Registrar is responsible for determining accreditation criteria, maintaining the register of accredited practitioners, and enforcing a code of practice. However, while both the Arbitration Act and the Civil

Procedure Code mandate accreditation, they lack specific provisions for the conduct of arbitrators and other ADR practitioners. Section 64D(4)(c) of the Civil Procedure Code allows the Minister to create regulations for a Code of Conduct, which led to the establishment of regulations in 2021 to govern the conduct of accredited practitioners.

Despite the introduction of these regulations, concerns remain regarding the administration of justice and the potential violation of the principle of natural justice, particularly the rule against bias. The Code of Conduct grants the Registrar and the Accreditation Panel the power to act as complainants, investigators, prosecutors, and adjudicators, creating a conflict of interest that undermines impartiality in disciplinary proceedings. This article highlights the implications of these legal frameworks and emphasizes the need for reforms to ensure fair and unbiased processes in the administration of justice.

3.1. Rule Against Bias

The rule against bias, encapsulated in the Latin maxim **nemo judex in causa sua**, asserts that no one should be a judge in their own cause, emphasizing the need for impartiality in judicial proceedings. This principle encompasses three key rules: (1) no one shall be a judge in their own cause, (2) justice must not only be done but must also be seen to be done, and (3) those in authority should be above suspicion. Article 13(6)(a) of the Constitution of the United Republic of Tanzania recognizes the principle of natural justice, ensuring that individuals are entitled to a fair hearing and the right of appeal when their rights are determined by a court or agency.

In [Donald Kilala vs Mwanza District Council], it was established that the rule of natural justice applies not only to judicial decisions but also to administrative ones. Even in the absence of statutory provisions, common law will fill the gaps. The rule against bias is rooted in two principles: no one should judge their own cause, and justice must be manifestly seen to be done. In [City of London vs Wood], it was held that allowing the same person to be both party and judge creates a contradiction, undermining the fairness of the process. Similarly, in [Ramadhani Mlindwa vs Republic], the court emphasized the fundamental importance of justice being visible.

3.2. Types of Bias

Bias in judicial proceedings can be categorized into three main types: pecuniary bias, personal bias, and subject or policy bias. Pecuniary bias occurs when a judge has a financial interest in the outcome of a dispute, which disqualifies them from serving impartially; for instance, in Visakhapatnam Cooperative Motor Transport Ltd vs Bangaruraju, the court annulled a decision made by a District Collector with a financial stake in the cooperative society involved (Visakhapatnam Cooperative Motor Transport Ltd vs Bangaruraju, 2001). Personal bias arises from close relationships, such as friendships or professional connections, that may compromise a judge's neutrality; this was evident in N.B Jeejee Bhoy vs Assistant Collector Thana Prant Thana, where the court identified personal bias due to a judge's affiliation with a cooperative society relevant to the case (N.B Jeejee Bhoy vs Assistant Collector Thana Prant Thana, 1975). Lastly, subject or policy bias occurs when a decision-maker has a direct or indirect interest in the case, or when preconceived notions influence their judgment; in Elijah Ndengwa vs Nairobi Liquor Licensing Authority, the Supreme Court overturned a licensing decision because members who had previously investigated the premises participated in the adjudication, creating an inherent bias (Elijah Ndengwa vs Nairobi Liquor Licensing Authority, 2018).

3.3. Test for Bias

Historically, the test for bias focused on the likelihood of bias. In [Metropolitan Properties Co (FGC) LTD vs Lannon], the court introduced the "reasonable man" standard, stating that bias is assessed based on whether a reasonable person could perceive a danger of bias. The court emphasized that the inquiry is not about actual bias but about the perception of bias by an outsider with no inside knowledge of the situation.

Administration Of Justice for The Breach of Professional Code of Conduct by The Accredited Reconciliator, Negotiator, Mediator and Arbitrator.

Basically, as explained above before the year 2021, there were no any law which was regulating the conduct of the reconciliators, negotiators, mediators and arbitrators, but following the amendment made by the arbitration Act, Regulations were made to govern and regulate the accredited Reconciliators, Negotiators, Mediators and Arbitrators.

The two Regulations were made which are; Reconciliator, Negotiation, Mediation and Arbitration (Practitioners Accreditation) Regulation this Regulation provides for administrative matters, establishment of the Accreditation Panel, criteria for accreditation, accreditation procedures and qualification for person to be accredited. Another Regulation

which was made is the Code of Conduct and Practice for Reconciliator, Negotiator, Mediator and Arbitrator, Regulation to govern the establishment of Code of Conduct and practice, Breach of Code and Proceedings upon Breach.

3.4. Establishment of the Accreditation Panel

The accreditation Panel and its composition is established under Regulation 3(1) of the Reconciliation, Negotiation, Mediation and Arbitration (Practitioners Accreditation) Regulation this Regulation provides that, the Registrar shall, for these Regulations and the effective implementation of the provision of the Act, convene meetings of the Accreditation Panel which shall be composed of seven members.

- The Attorney General who shall sit as the chairperson
- The Solicitor General
- The chairperson of the Governing Board of the Tanzania Arbitration Centre
- The President of the Tanzania Institute of Arbitrators
- The President of Tanganyika Law Society
- One representative appointed by the Minister from each of the following
- National Construction Council, and
- Public Procurement Regulatory Authority

Regulation 3(2) of the Reconciliation, Negotiation, Mediation and Arbitration (Practitioners Accreditation) Regulation provides for the Registrar. The Registrar under Regulation 3(2) is appointed under Section 64C (1) the Civil Procedure Code who shall be the Secretary of the Accreditation Panel.

3.5. Access to the Accreditation Panel for an Aggrieved Person

Regulation 7(1) of the Code of Conduct and practice for Reconciliators, Negotiators, Mediators and Arbitrators, Regulations provides that, it shall constitute a professional misconduct for any accredited reconciliator, negotiator, mediator and arbitrator who breaches the Code. Regulation Sub Regulation 2 provides that, a person who commits a professional misconduct shall be liable to such disciplinary action as may be imposed pursuant to these Regulations.

Regulation 8 of the Code of Conduct and practice for Reconciliators, Negotiators, Mediators and Arbitrators, Regulations provides for how a person who has been aggrieved by the conduct of the reconciliator, negotiator, mediator and arbitrator can have the access to the Accreditation Panel.

Regulation 8(1) of the Code of Conduct and practice for Reconciliators, Negotiators, Mediators and Arbitrators Regulations provide that, a person who aggrieved by a conduct of a reconciliator, negotiator, mediator or arbitrator may in writing lodge a complaint to the Registrar against a reconciliators, negotiator, mediator or arbitrator's breach of conduct.

Regulation 8 (3) of the Code of Conduct and practice for Reconciliators, Negotiator, Mediators and Arbitrators Regulations provide for the Registrar and the accreditation Panel that can also lodge a complaint against the reconciliator, negotiator, mediator or arbitrator's breach of conduct,

the Regulation provides that, nothing in these Regulations shall be construed to restrict the Registrar and the Accreditation Panel from commencing disciplinary proceeding *suo motu*.

Regulation 8(2) of the Code of Conduct and practice for Reconciliator , Negotiator, Mediator and Arbitrator, Regulations provides how the complaint can be lodged, it provides that, the complaint shall be lodged either in Kiswahili or English language in Form 1 as set out in the second schedule supported by any other document or information as proof of the alleged complaint.

A person cannot lodge a complaint to the accreditation Panel unless as provided under Regulation 8(1) of the Code of Conduct and practice for Reconciliator, Negotiator, Mediator and Arbitrator, Regulations believes that the reconciliator, negotiator, mediator or arbitrator has-

- Committed a professional misconduct;
- Failed to discharge his duty to the client in a professional manner
- Engaged in a business which is inconsistence with the dignity of the profession
- Permitted his professional services or his name to be used by an unauthorized person

Committed any act prohibited by the Act, or any other law regulating the professional conduct of a reconciliators, negotiator, mediator or arbitrator.

3.6. Determination of the Compliant Lodged by the Complainant

The Accreditation Panel after consideration of the matter as per requirement of Regulation 12(1) of the Code of Conduct and practice for Reconciliator, Negotiator, Mediator and Arbitrator, Regulations, the complaint made is proved, the Accreditation Panel shall direct the Registrar to issue the a declaration for breach of professional misconduct in Form 2 as prescribed in the second schedule, and as per requirement of Regulation 12(2) of the Code of Conduct and practice for Reconciliator, Negotiator, Mediator and Arbitrator, Regulations a breach of professional misconduct under sub regulation(1) shall warrant a person against whom the complaint is made-

- With a breach on a first instance, to be given a written warning
- To be required to pay such amount of money as may be adequate to cover the cost or loss incurred by the complainant because of the complaint
- To be deregistered from practicing as an accredited reconciliator, negotiator, mediator or arbitrator in a manner set out the Reconciliator, Negotiator, Mediator and Arbitrator (Practitioners Accreditation) Regulation,2021 or
- To be subject to any other measures as may be appropriate.

Regulation 13 of the Code of Conduct and practice for Reconciliators, Negotiators, Mediators and Arbitrators Regulations provide that, the Accreditation Panel shall have powers regulate its own proceedings. Regulation 14(1) of the Code of Conduct and practice for Reconciliators, Negotiators, Mediators and Arbitrators, Regulations provides that, the proceedings of the Accreditation Panel shall be taken or recoded by the by the Secretary to the Panel or by short hand notes or electronically or stenographically recoded means.

Regulation 9(1) of the Code of Conduct and practice for Reconciliators, Negotiators, Mediators and Arbitrators Regulations provide that the Registrar shall, within seven days upon receiving a complaint determine whether the complaint is tenable or frivolous and vexatious. And whereas per Regulation 9(2) The Code of Conduct and practice for Reconciliator, Negotiator, Mediator and Arbitrator, Regulations the Registrar is satisfied that a complaint is tenable, he shall inform the complainant of the date and time for which the complaint shall be brought before the Accreditation Panel. But whereas per requirement of Regulation 9(3) of the Code of Conduct and practice for Reconciliator Negotiator, Mediator and Arbitrator, Regulations the Registrar considers that a complaint is malicious or frivolous and vexatious, he shall reject the complaint and notify the complaint in writing with reason thereof.

Regulation 10 of the Code of Conduct and practice for Reconciliator Negotiator, Mediator and Arbitrator, Regulations provides for the complaint report to be prepared by the Registrar. That Regulation provides that, the Registrar shall, before convening a meeting of the Accreditation

Panel, prepare a complaint report on the complaint brought before the him together with recommendations to the Accreditation Panel for disciplinary action.

Regulation 11 of the Code of Conduct and practice for Reconciliator, Negotiator, Mediator and Arbitrator, Regulations provides for determination of the complaint. Regulation 11(1) of the Code of Conduct and practice for Reconciliator, Negotiator, Mediator and Arbitrator, Regulations provides that, a complaint filed under these Regulations shall be determined by the Accreditation Panel to be convened by the Registrar within fourteen days from the date of receipt of the complaint. In Considering the complaint as provided under Regulation 11(2) of the Code of Conduct and practice for Reconciliator, Negotiator, Mediator and Arbitrator, Regulations, the Accreditation Panel may;

- Advise the Registrar to investigate on the matter
- Advise the Registrar to conduct inquiry as may be appropriate in view of the nature or circumstances of the complaint
- Call the complainant and such other witness to testify on the matter, and
- Cause to brought ll documents relating to the matter for consideration

Regulation 11(3) of the Code of Conduct and practice for Reconciliator, Negotiator, Mediator and Arbitrator provides for right to be heard, it provides for the effective delivery of the ends of justice, the Accreditation Panel shall afford an opportunity to a person against whom the complaint is made to be heard.

4. Violation Of Rule Against Bias by the Registrar and The Accreditation Panel in Administration of Justice for the Reconciliator, Negotiator, Mediator and Arbitrator's Breach of Code of Conduct

From its face, the Code of Conduct and Practice for Reconciliator, Negotiator, Mediator and Arbitrators, Regulations has violated the rule against and or provides for the violation of rule

against bias, the reasons to that effect are not far to get. Regulation 8(1) of the Code of Conduct and Practice for Reconciliator, Negotiator, Mediator and Arbitrators Regulations provide that, any person who has been aggrieved by the conduct of the reconciliator, negotiator, mediator and arbitrator can lodge a complaint to the Accreditation Panel. Further the Regulation 8(3) of the Code of Conduct and Practice for Reconciliator, Negotiator, Mediator and Arbitrators Regulations provide that, the Registrar and the Accreditation Panel can commence the disciplinary proceedings on suo motu against the reconciliator, negotiator, mediator and arbitrator's breach of conduct.

The Registrar is the Secretary to the Accreditation Panel; therefore, the Registrar is part of the Accreditation Panel. Where the Registrar or the Accreditation Panel commence the disciplinary proceedings suo motu they become the complainants, therefore all procedures of disciplinary action will be followed as the complaint has been lodged by any other person. Therefore, within seven days after commencing the disciplinary action, the complaint will be determined by the Registrar under Regulation 9(1) of the Code of Conduct and practice for Reconciliator, Negotiator, Mediator and Arbitrator, Regulations to see whether the complaint is tenable or frivolous and vexatious as per Regulation 9(2) The Code of Conduct and practice for Reconciliators, Negotiators, Mediators and Arbitrators, Regulations. The act which is done is the violation of the rule against bias because the Registrar is the secretary to the accreditation panel so the Registrar became the judge of his own cause as held in *City of London vs Wood*(supra), that, it is against the law that the same person should be part and judge in the same cause, for it is manifest contradiction; for the party is that to complain to the judge, and the judge is to hear the party, the party endeavor to have his will, the judge determines against the will of the party and has authority to enforce his to obey his sentence and can any man act against his will or enforce himself to obey.

Where the Registrar is satisfied that a complaint is tenable, he shall inform the complainant of the date and time for which the complaint shall be brought before the Accreditation Panel. Here the complainant is the Registrar or the accreditation Panel, the act which is done is the violation of the rule against bias that you cannot be a judge for your own cause. In *City of London vs Wood* (supra).

Where the Registrar is satisfied that a complaint is tenable, he shall inform the complainant of the date and time for which the complaint shall be brought before the Accreditation Panel. Here the complainant is the Registrar or the accreditation Panel, the act which is done is the violation of the rule against bias that you cannot be a judge for your own cause. In *City of London vs Wood* (supra).

Regulation 9(3) of the Code of Conduct and practice for Reconciliator Negotiator, Mediator and Arbitrator, Regulations states that, the Registrar considers that a complaint is malicious or frivolous and vexatious, he shall reject the complaint and notify the complaint in writing with reason thereof, it is not in the mind that the Registrar can reject the complaint filed either by the Registrar or the Accreditation Panel the said complaint which raise by the Registrar or the accreditation Panel cannot be rejected.

After the complaint has been determined and satisfied the complaint is tenable, the Registrar shall prepare a complaint report on the complaint brought before him together with recommendations to the Accreditation Panel for disciplinary action before convening a meeting of the Accreditation Panel. Here again the disciplinary process has been raised by the Registrar of the Accreditation Panel, the Registrar who is part and parcel of the accreditation Panel prepare a report and Recommendations to Accreditation Panel for disciplinary action, it is like reporting the matter, investigate it, and take to court or tribunal and seat as adjudicator to adjudicate the matter which is total violation of the rule against bias.

Regulation 10 of the Code of Conduct and practice for Reconciliator Negotiator, Mediator and Arbitrator, Regulations provides for the complaint report to be prepared by the Registrar. That Regulation provides that, the Registrar shall, before convening a meeting of the Accreditation Panel, prepare a complaint report on the complaint brought before him together with recommendations to the Accreditation Panel for disciplinary action. This act is against the rule against. Let be born in mind that Rule against is one of the principle of natural justice, so a person who initiated a complaint in suo motu and by his/herself prepare a report and recommendation before the Accreditation Panel is total against the rule of Bias. In the case *Donald Kilala vs Mwanza District Council* it was held that the rule of natural justice is the rule of wise and wisdom is not exclusive domain of judicial, but even to the administrative decision. It is worthless

to put pigeonhole on the application. Even where the statute does not provide for the rule of natural justice, the common law will supply the omission.

As per requirement of Regulation 11(1) of the Code of Conduct and practice for Reconciliator, Negotiator, Mediator and Arbitrator, Regulations, after the complaint report been prepared together with recommendation and submitted to the Accreditation Panel for disciplinary actions, the Accreditation Panel shall within fourteen days from the date of receipt of the complaint determine the complaint convened by the Registrar. This again is the violation to the rule against bias, that the Registrar or the accreditation panel commenced the disciplinary action on *suo motu*, then sit to determine the complaint which has been raised by the Registrar or the Accreditation Panel which the Registrar is a secretary, that you cannot be a judge for your own cause as stated in *City of London vs Wood* (supra).

In considering the complaint which has been commenced on *suo motu* by the Registrar or the Accreditation Panel, the Accreditation Panel may as per requirement of Regulation 11(2) of the Code of Conduct and practice for Reconciliator, Negotiator, Mediator and Arbitrator, Regulations,

- Advise the Registrar to investigate on the matter
- Advise the Registrar to conduct inquiry as may be appropriate in view of the nature or circumstances of the complaint
- Call the complainant and such other witness to testify on the matter, and
- Cause to brought all documents relating to the matter for consideration

This is the violation of the rule against bias, because where the disciplinary action has been commenced *suo motu* by the Registrar, the Registrar is advised to investigate on the matter, or is advised to conduct inquiry, is called together with such witness to testify or where the disciplinary action has been commenced by the Accreditation Panel *suo motu* in which the Registrar is a secretary, the Accreditation Panel advice the secretary of the Accreditation Panel to investigate on the matter or conduct inquiry or call the complainant who is the Accreditation Panel and the witness to testify.

The Registrar or the Accreditation Panel became the complainant and the investigator of the complaint which is contrary to the rule against bias. In *Elijah Ndengwa vs Nairobi Liquor Licensing Authority* (supra), it was held that the constitution of the licensing court in reaching the decision included the two members who visited and investigated the premises and gave the evidence, the licensing court must have been biased, and the two members had acted as the prosecutor, witnesses and judge in the same cause.

Whereas in consideration of the matter as per requirement of Regulation 12(1) of the Code of Conduct and practice for Reconciliator, Negotiator, Mediator and Arbitrator, Regulations, the complaint made is proved, the Accreditation Panel shall direct the Registrar to issue a declaration for breach of professional misconduct in Form 2 as prescribed in the second schedule. The Accreditation Panel if initiated the disciplinary action on *suo motu* made a decision and direct the Registrar to declare the breach of profession misconduct and order the Registrar to issue a declaration for breach of profession misconduct or where the Registrar initiated the disciplinary action on *suo motu* and the decision made by the Accreditation Panel order the Registrar who is the Secretary of the Accreditation Panel to issue the declaration order for the breach of the profession misconduct. That act is the violation of the rule against bias because the Accreditation Panel or the Registrar became the complainant, the investigator, the Prosecutor, the witness and the judge at the same time and for their own cause. With *Elijah Ndengwa vs Nairobi Liquor Licensing Authority* (supra), it was held that the licensing court must have been biased, the two members had acted as the prosecutor, witnesses and judge in the same cause.

Again, after declaring that there is the breach of professional misconduct, that breach as under Regulation 12(2) of the Code of Conduct and practice for Reconciliator, Negotiator, Mediator and Arbitrator Regulations, shall warrant a person against whom the complaint was made-

- With the breach on a first instance, to be given a written warning;
- To be required to pay such amount of money as be adequate to cover the cost of loss incurred by a complainant as the result of the complaint;
- To be deregistered from practicing as an accredited reconciliation, negotiator, mediator or arbitrator in a manner set out the Reconciliation, Negotiation, Mediation and Arbitration (Practitioners Accreditation) Regulations, 2021 or to be subject to any other measures as may be appropriate.

This again is the violation of the rule against bias, because the Registrar or the Accreditation Panel is a compliant, investigator, prosecutor, witness and adjudicator and provides for a punishment, it becomes a judge for its own cause. In Motosach International Co. Ltd vs Dar es Salaam City Council, court held that, the arbitrator was bias because he has a relationship with the Respondent Dares salaam City Council because the Arbitrator was the employee of Kinondoni Municipal Council which is the sister of the Respondent and therefore all made was quashed and set aside.

Although there are exceptions to rule against bias, as explained in Ramadhani Mlindwa vs Republic (supra) which are necessity and waiver. Where a disqualified adjudicator cannot be replaced as no one else is authorized to act, natural justice has to give way a necessity in order to maintain the integrity of judiciary and administrative system. Secondly, an objection should be taken as soon as the prejudiced party has knowledge of bias, if no such objection is raised, and the proceedings are allowed to continue without disapproval, it will hold that the party has waived his right to complain about bias.

Let be born in mind that where there is a violation of principles of natural justice, rule against bias inclusive, the whole decision will be declared void. In Ramadhani Mlindwa vs Republic (supra) it was held that, if principles of natural justice are violated regarding any decision, it is indeed immaterial whether the same decision would have been arrived at in the absence of any departure from the essential principle of justice, the decision must be declared to be no decision.

Again, in Ramadhani Mlindwa vs Republic (supra) court held that, rule against bias, means that a person is bared from deciding any case in which he or she may be, or may fairly be suspected to be biased. This embodies the basic concept of impartiality, and applies to court of law, tribunals, arbitrators and all those having duty to act judicially. The purpose of maintaining impartiality is to maintain public confidence in the legal system, justice must be rooted in confidence and confidence is destroyed when right minded people leave thinking, the judge was bias.

However, the Code of Conduct and Practice for Reconciliators, Negotiators, Mediators and Arbitrators Regulation, has clearly provides for pure violation of rule against bias, it has given powers to the Registrar and the Accreditation Panel to be the complainant, investigator, prosecutor and adjudicator, that they can be the judge for their own cause while the rule against bias provides that no one can be a judge for his or her own cause.

Even though there are exceptions to the rule against bias but the test of a reasonable man should of a paramount important in determination of rights of a person as well stated in Metropolitan Properties Co (FGC) LTD VS Lannon (supra) that "There must be circumstances from which a reasonable man could or favored one side unfairly at the expenses of the other. The court will not inquire whether he did in fact favor on side unfairly. Suffice it that reasonable people might think that he did".

Justice always should be always be given wealth consideration because as clearly stated in the case Ramadhani Mlindwa vs Republic (supra), that, it is, not merely of some important, but of fundamental importance that justice should only be done but should manifestly be seen to be done.

Code of Conduct and Practice for Reconciliators, Negotiators, Mediators and Arbitrators Regulation, has provided violated the rule against bias by conferring power and authority to the Registrar and the Accreditation Panel to be the judge for their own cause which is the violation of rule against bias. The Regulation has opened Pandora box for the Registrar or the Accreditation Panel to directly violate the rule against bias.

5. Conclusion

This article highlighted the violation of rule against bias in the Administration of Justice for the Breach of Professional Code of Conduct by reconciliator, negotiators, mediators and arbitrator. It indicated that, the Code of Conduct and Practice for Reconciliators, Negotiators, Mediators and Arbitrators Regulation, has provided for the violation of rule against bias in the administration of justice for the breach of profession misconduct by the reconciliator, negotiator, mediator and arbitrator because it provides for the Registrar and or the Accreditation Panel to be the complainant, the investigator, prosecutor and the adjudicator which is the violation of the rule against bias that, you cannot be a judge for your own cause.

It recommends the law to be amended. The Code of Conduct and Practice for Reconciliators, Negotiators, Mediators and Arbitrators Regulation. Should be amended, the Registrar and the Accreditation Panel should not be the adjudication body, it should remain with the duty of accreditation of the reconciliator, negotiator, mediator and arbitrators. The Registrar should remain with the powers and duties as the Registrar of the reconciliator, negotiator, mediator and arbitration and the secretary to the accreditation panel. The independent disciplinary body of the accredited

reconciliator, negotiator, and mediator or arbitrators breach of professional misconduct should be established and the Registrar or Accreditation Panel should not be part and parcel of it.

It is recommending that, the Code of Conduct and Practice for Reconciliators, Negotiators, Mediators and Arbitrators Regulation should be amended to abolish all the powers of the Registrar and the Accreditation Panel who have been given powers to be a judge for their own cause, but if there is established independent body to adjudicate the disciplinary action against the professional misconduct by the Accredited reconciliator, negotiator, mediator and arbitrator rule against bias as it is today will not be applicable. The accredited reconciliator, negotiator, mediator and arbitrator will enjoy the independent machinery established for the disciplinary actions.

Compliance with ethical standards

Acknowledgments

This study acknowledged all literatures and other sources which are presented from parties other than the authors. Even when previous works of the authors have been used proper citations have been done and well referenced.

Disclosure of conflict of interest

Authors of this study have no any conflict of interest with any second or third part. The authors of this work are independent and have produced original work which under any case it does not interfere with any other individuals' rights or authorities at any capacity.

Statement of ethical approval

This study is a product of a research work that does not contain any studies performed on animal's/humans' subjects by any of the authors.

Statement of informed consent

All data used in this study observed the ethical principle of informed consent, where the respondents declared their willingness to participate in the research after clear information on what the research is all about was given to them. No respondent was forced at any capacity to give information without their consent

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