

Commission for Mediation and Arbitration Efficiency in Tanzania

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ABSTRACT

This paper explored the Commission for Mediation and Arbitration Efficiency towards Disputes Solving particularly in Dodoma Municipality. It attempts to examine the CMA which has encountered a number of challenges such as budgetary crisis of funding to accomplish its activities and documentation problems. Data were collected using a questionnaire, interview, observation and documentary reviews. Documents such as journals, books and an assortment of organizations reports for enterprises information were thoroughly analyzed. Descriptive statistics summarized the information from the collected data. The data were analyzed both qualitatively and quantitatively with an aid of a Statistical Package for Social Sciences (SPSS). The findings unveiled that CMA in the selected area experienced a colossal failure to apply relevant procedures and applicable principles already in place before considering over undertaking actions and decisions that at the end may mischief their goals. Consequently, CMA fails to achieve its goals and is incapable of solving disputes between employees and employers. Due to this actual situation, CMA becomes

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more and more unreliable and distrustful. There was a very poor training done by CMA to its stakeholders, pitiable working conditions and skimpy management, unfriendly working environment and poor remuneration. It was recommended that, the government should allocate an adequate amount of fund to CMA so as to guarantee the efficient and sufficient training programs for CMA. Performance and education on labour laws should be provided by CMA to the working environment as a way of preventing labour disputes. Eventually, the CMA officials need to abide by regulations and be strict in handling disputes and avoid delay of the ruling.

Key Terms: *Mediation, conciliation, compromise agreement, arbitration, Ira arbitration, privatization of public enterprises, Tanzania*

INTRODUCTION

The world equipment (ILO) from the beginning to the end and the labour law component of the United Nations Development Assistance Plan (UNDAP) inquire to increase awareness of employers and workers of appropriate labour laws and services afforded by the relevant labour institutions. Secondly, they should increase the capacity of labour institutions to provide services and make obligatory compliance with labour laws. Different nations in the world have policies that recognize the presence of legal institutions for the purpose of dispute solving (Rutasitara, 2014). For instance, in Great Britain the earliest piece of labour legislation was enacted in 1349 when the Ordinance of Labourers was put in place to hold down wages following the emergence of labour shortage after the Black Death in the late 1340s (Hardy & Hardy, 2011). The Statute of Artificers 1562 provided for Justices of Peace to regulate wages locally, to require able-bodied men to work in the fields, and minimum hiring periods for servants and apprentices.

A further Act in 1747 provided for Justices to arbitrate into what would now be described as contractual disputes. In China, for instance, there are institutions

such as Chinese International and Trade Arbitration Commission (CIETAC) and Chinese Maritime Arbitration Commission (CMAC); in South Africa there is CCMA; and in Tanzania there is CMA (Chua, 2006). World-widely, there is no way one can escape from disputes and conflict in the working environment as long as individuals differ in terms of thinking and interpretation of different matters. In some countries, such as South Africa, CCMA is the institution that deals with dispute solving through counseling, mediation and arbitration (ibid.). In case of Tanzania, any disputes that may arise pertaining to the collective agreement in the working environment are directly referred to the mediation process and when the mediation fails, the matter is forwarded for arbitration and await for a court decision. All processes of mediation and arbitration, according to the Tanzanian labour law, do take place under CMA (ELRA, 2004). In Tanzania, the Commission for Mediation and Arbitration (CMA) was established in 2007 following several reforms made on the old labour laws (Ramsden & Ramsden, 2009). The role of CMA as a tool for achieving socio-economic development, industrial democracy and justice lies in the objectives of its establishment, which entail inter alia promoting industrial harmony, peace and equality. These could be achieved through effective and efficient Mediation, Arbitration and enforcement of legislation, guidelines and regulations on labour related matters. In executing its functions, CMA needs to be guided by the law provisions and the case laws provided for through the decisions made by the superior court, in this case, the High Court of Tanzania – Labor Division (CMA, 2007).

Notwithstanding the diverse studies being conducted in different areas, seemingly, nothing shows the decrease in the number of cases which are being opened at CMA. For example, Tanzania & Zanzibar Labour Market Profile (2013) entails that since inceptions in 2007 to 2010, CMA had received around 19,000 cases. In fact, this does not justify the decrease in number of cases. The study attempted to answer the following questions: i) What are the functions and

efficiency of CMA? ii) What are the causes of disputes at work places? iii) Does CMA efficiently resolve employees and employers disputes at work places?

The Tanzanian CMA applies arbitration as one of the ADR's machineries in settling labour disputes. Dissimilar in mediation where there is party sovereign, arbitration under CMA practice involves examination where the parties present proof and argument and the verdict of the arbitrator is provided with rationales in a black and white award (Government Notice Number 67 of 23 March 2007, rule 18 (2) and (3)). An arbitration award is binding on the parties and is enforceable before the court. The Act provides that, arbitration under CMA comes after the failure of settlement in the mediation process (ELRA, 2004). The Commissioner can appoint an arbitrator before the dispute has been mediated. Despite the troubles faced by CMA in Tanzania, the commission has resolved many disputes at a pace rate when compared to the speed at which disputes used to be settled under district courts and the Industrial Court of Tanzania. In 2009, it is reported that two thousands eighty hundred and seventy eight (2878) cases were referred to CMA where one thousand five hundred and thirty five (1535) cases were settled in the mediation phase, whereas three hundred (300) were decided at the arbitration stage and the remaining were referred to the Labour Court (personal interview with the Commissioner of CMA, Amani Mwalongo, on 13/04/2010 –(Temba, 2013).

Another obstacle affecting the functioning of CMA is finance. Financial constraints in Tanzania have hindered the initiation of the commission's website where one may access information about its operation. Such constraints make it tough for CMA to carry out its duties effectively in terms of research and speedy determination of disputes. In addition, the commission does not have offices in all the regions, hence some of the mediators and arbitrators have the task of travelling for handling disputes in more than one region. As a result, the job becomes tough and unfriendly to the practitioner. Although legal representation is restricted in both Australia and South Africa, in Tanzania the

same is not restricted; hence, a bar to achieve the goals for the establishment of CMA. Many studies have been conducted on this sphere. Nevertheless, those studies seemingly do not show clearly if the existing problem have been addressed then drives different scholars to seek or search the way out in a such way that the problem of disputes at the working environment should be addressed accordingly. This is why the inquisitiveness over this area of study is to assess the efficiency of CMA towards problem solving in Tanzania and Dodoma Municipality in a particular by looking into its functions.

MATERIALS AND METHODS

The study was conducted in Dodoma Municipality because of being populated by different institutions, both private and public, where different services are obtained such as schools, dispensaries, hospitals, universities and many others. In these areas, the issue of disputes resolution is highly expected. The region is administratively divided into one parliamentary constituency, 4 divisions, 37 wards, 39 villages, 100 streets and 222 hamlets. While the original inhabitants of Dodoma Municipality are believed to be the Gogo and Rangi, there are now many mixed tribes from neighboring regions. This is due to the trade and cultural relationships in the area. According to the population and housing census of 2012, Dodoma Municipality had 410,956 people of which male were 196,487 and females were 211,469 with the households' size growth of 4.4. The number of households was 93,339. The growth rate was 2.7%. Nevertheless, economic activities carried out in the municipality are agriculture, fishing, trading and industry (Dodoma Urban Profile, 2016).

Several methods were used in collecting data, namely interview, documentary survey based on publications and observation. The study employed a sample size of 40 respondents: 4 CMA stakeholders, 2 CMA officials/lawyers, 8 trade union representatives, 18 employers/HR practitioners and 12 employees. For the purpose of this study, the collected data were edited for accuracy, coded and

analyzed in the form of tables, percentages and inferential analysis. Both qualitative and quantitative methods were used in processing the information collected. The quantitative technique was used to answer the study questions in numerical values.

Results and Discussions

DISCUSSION AND FINDINGS

Results and Discussions

Respondents' Socio-economic Background

This part goes deeply into the research results concentrating on the respondents and their spouses on matters of sex, age, education, marital status and occupation. This socio-economic uniqueness of the respondents is important to resolve the position of the respondents and answers they provide in the study area. Frequency distribution was used to classify data, to give sense to the response rates and make easy insights. In tables, frequency distribution of responses was arranged by events, from the highest to the lowest, obtained from the responses. Each of these was elaborated in the preceding parts in relation to the Commission for Mediation and Arbitration Efficiency Towards Disputes Solving in Tanzania as presented in Table 1.

Table 1: Respondents' Socio-economic Background

	Age (%)			Sex (%)		Education (%)				Working Exp. (%)			Working Category (%)			
18-36	36-46	46-54	54&Ab	Mal	Fe	Sc	Cl	HI	VT	1-5	6-10	11-15	Emp	Tu	HR	Ts
37.5	32.5	20.0	10.0	62.5	37.5	10.0	2.5	62.5	25.0	25.0	55.0	20.0	3.0	20.0	45.0	5.0

Fem= Female, Sc= Secondary, Cl= College, HI= Higher Learning= Vocational Training, Em= Employees, Tu= Trade Unions, HR= Human Resources, Ts= Technical Staffs, Exp= Experience, Ab= Above.

Male respondents were 25(62.5%) and female respondents were 15(37.5%). From the findings, no one was interviewed or responded to the questionnaire below

the age of 18 years; however, majority of the respondents' age diverged from 18 and 36 years. They were 15(37.5 %) respondents from the selected sample – this was the second group. The third often occurring age group was ranging between 36 and 54years. They were 13(32.5 %) respondents. The fourth group ranged between 54 and above years, thus making up 20% of the respondents. The last group ranged between 55 and 60 years. In Tanzania, this is the retirement age: voluntary retirement at 55 and mandatory retirement at 60 years. The age structure shows that CMA stakeholders are mostly composed of highly active employees who may designate their dreams to become accustomed to the rapidly changing economic situation in the nation. Furthermore, this age composition was appropriate for the study as the employees studied were more likely to stay in the work place for a long time because they had a very significant role for its future routine.

A good number of respondents had a higher level of education, i.e. a degree. Out of 40 respondents, 25(62.5 %) had a degree. Only 1(2.5%) respondent had a college level education, while 4(10 %) respondents had secondary level education. Moreover, 10(25 %) respondents were at the vocational training level.

The researcher sought after to be acquainted with the allocation of working experience in order to know the quality of responses justified with the inputs made to the study. The distribution table shows that, majority of the respondents were between 6 to 10 years equivalent to 55% who had sufficient knowledge to provide appropriate responses to the study.

The findings from the field indicated that, majority of the respondents, equal to 90%, recognized that CMA was dealing with solving employers versus employees disputes at the work place; only one respondent said no and the other one was not sure if CMA dealt with disputes solving at the working environment (cf. Table 2).

Table 2: Awareness of CMA in Solving Work Place Disputes

Responses	Frequency	Percentages
Yes	38	95.0
No	1	2.5
Not sure	1	2.5
Total	40	100.0

This implies that, the CMA stakeholders were aware of the functions of the Commission in a way that they could analyze the Commission's efficiency. In this regard, 20(50%) respondents from the category of operational staff/ employees said that CMA helped to solve work place disputes to a large extent; 10 (25%) respondents from the category of trade union representatives said that CMA helped to solve work place disputes at an average level; 5(12.5%) respondents from the category of HR practitioners said that CMA helped to resolve work place disputes to a lesser extent; 2(5%) respondent said *all of the above* and 2(5%) respondent said they knew nothing; . and 1(2.5%) respondent was not sure (cf. Table 3).

Table 3: The Extent of CMA in Solving Workplace Dispute

Responses	Frequency	Percentages
Large extent: CMA Officials/ Operation staff	20	50.0
Average: Trade Union Representative	10	25.0
Lesser extent: Lawyers/ HR practitioners	5	12.5
All of the above: Employees	2	5
Not sure: Acting/Assistant staff	2	5
Know nothing	1	2.5
Total	40	100.0

10(25%) respondents said the main source of disputes was ignorance of labour laws to the employers and employees ; 5(12.5%) respondents said poor working environment was the source of disputes; 5 (12.5%) respondents said the causes of disputes at workplaces was poor management; and the rest 20(50%) respondents said *all of the above* (cf. Table 4).

Table 4: Causes of Disputes at Workplaces

Responses	Frequency	Percentages
Ignorance of the labour law	10	25.0
Poor working environment	5	12.5
Poor management	5	12.5
All of the above	20	50.0
Total	40	100.0

This indicates the respondents' awareness on the causes of disputes at work places. About 3(7.5) respondents said that CMA did undertake skills enhancement to the employers and employees at work places; 5(12.5%) respondents said that CMA did conduct conference to employers and employees; 7(17.5%) respondents said that CMA did conduct workshops and seminars for labour laws to employees and employers; and lastly, 25(62.5%) respondents said *none of the above* was correct (cf. Table 5).

Table 5: Measures Taken by CMA to Prevent Disputes at Work Places

Responses	Frequency	Percentages
Skills enhancement of employees and employers on labour law	3	7.5
Conference to employers and employees on labour laws	5	12.5
Seminars and workshops on labour laws	7	17.5
None of the above	25	62.5
Total	40	100.0

This indicates respondents' awareness on measures taken by CMA in preventing disputes at work places that escalate to this outcome. 25(62.5%) respondents said that the government budget was the main source of revenue of CMA; 10(25%) respondents were not sure if revenue came from the government or not; 4(10%) respondents did not know the source of revenue to CMA; and 1(2.5%) respondent said all of the answers were not correct (cf. Table 6).

Table 6: Main Sources of Finance for CMA to Execute its Activities

Responses	Frequency	Percentages
Government budget	25	62.5
Not sure if comes from the government budget	10	25
Don't know	4	10

All of the above are not correct	1	2.5
Total	40	100.0

This indicates the respondents' awareness on the financial sources that enable CMA execute its activities. 30(75%) respondents said that insufficient fund results into difficulties in conducting trainings to CMA stakeholders; 5 (12.5%) respondents said that insufficient fund limits the CMA offices; 4(12.5%) respondents said that they did not know the source of revenue; 3(7.5%) respondents said all answers were correct ; and 2(5%) respondents knew nothing (cf. Table 7).

Table 7: Result of Insufficient Fund on CMA Efficiency

Responses	Frequency	Percentages
Difficulty in conducting training	30	75.0
Limited CMA offices	5	12.5
All of the above answers are correct	3	7.5
Know nothing	2	5.0
Total	40	100

This indicates the impact of allocating insufficient fund on the efficiency of CMA activities. 30(75%) respondents agreed that the CMA's inefficiency was attributed by poor trainings to its stakeholders, while 10(25%) respondents partially agreed the inefficiency of CMA was attributed to poor trainings to its stakeholders (cf. Table 8).

Table 8: Outcomes of Poor Trainings to CMA's Efficiency

Responses	Frequency	Percentages
Totally concur	30	75.0
Partially concur	10	25.0
Total	40	100.0

Results in (Table 8) clearly indicate that the inefficiency of CMA was largely attributed to poor trainings provided to the CMA stakeholders.

About 60% of the respondents who were interviewed rated the efficiency of CMA's activities as being extremely effective at handling mediation duties; 45% said that arbitration activities were executed CMA very effectively; and 75%

were of the view that the training of CMA stakeholders (employees, employers, trade union representatives) was not effectively done. However, some of the respondents provided an observation that CMA officials did not take any preventive mechanism towards disputes between employers and employees at work places.

These findings justify that CMA is lagging behind in training its stakeholders (employees, employers and trade union representatives). Thus, on the basis of the findings, CMA needs to take strategic measures to improve the training activity.

Table 9: Efficiency of CMA in Handling its Activities

Functions	Level of Effectiveness of CMA in Handling of Its Functions in Percentage wise of the Respondents		
	Extremely Effective	Very Effective	Not Effective
Mediations Arbitrations	60%	30%	10%
Training of CMA stakeholders (employees, employers) Trade	40	45	15
Training of CMA stakeholders (employees, employers) Trade union representatives	0%	25%	75%

Conclusion

The study (i) identified the efficiency of CMA (ii) examined the causes of disputes between employers and employees at workplaces and (iii) explored the competences of CMA functions in settling employees and employers disputes at workplaces. It was found that, CMA has been facing serious financial problems that have led to its poor functioning. Poorly allocated fund by the government to CMA, noted from the field, has resulted into the failure of CMA to implement one of its core functions of conducting training to the CMA stakeholders (employers, employees and trade union representatives) for

prevention of disputes at work places. The failure of CMA to take preventive mechanism of disputes at work places has made CMA a ground of solving disputes while overlooking prevention of disputes at workplaces through conducting thorough and successful training. CMA has been marked from the field that, mediations and arbitration have been successfully implemented. It was also noted that, the Commission was suffering from dilemma of limited buildings for offices, inadequate number of staffs as well as incompetent CMA officials.

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References

- Baradyana, J. and A. Ame (2009), *Business Research Methods, Class Materials*. University of Dodoma.
- Bhangoo, K. (1995), *Dynamics of Industrial Relations*, Deep and Deep Publications, New Delhi. Case Revision No 282 of 2008, *High Court of Tanzania Labour Division* at Dar es-Salaam, Tanzania, (Unreported).
- CMA, (2007), "*Case Management Guide*", Volume 1 2007 To 2009. Dar es Salaam, Tanzania.

- Cohen, L. et al. (2007), *Research Methods in Education*, Southborough University, UK.
- Gibbons, M. (2007), A review of Employment Dispute Resolution in Great Britain.
- Jacob, K. (2002), *Industrial Relations in Public Sector in Kerala*,. Ph.D. Thesis, University of Kerala, Thiruvananthapuram.
- Jankowicz, A. (2005), *Business Research Projects*, 4th Edition, London: Thompson
- Kothari, C. (2002), "Research Methodology; Methods and Techniques", 2nd Edition, K.K Gupta Ltd, Delhi
- Mathur, R. (2003), *Industrial Relations In Private Sector In Haryana*, Ph.D. Thesis, Maharshidayanand University, Haryana.
- Mischke, C. (1997). *(Re)Inventions – Reflections Upon Entering A New System Of Dispute Resolution.*, In: Brand, J. (Ed.). 1997. Labour Dispute Resolution. Kenwyn: Juta
- Olatunde, T. (1997), *Sociology: an Introductory African Text*. Macmillan Education Ltd, London. Olatunde (1994).
- Pallant, J. (2007), "*Spss: Survival Manual*", Mcgraw-Hill Education, Berkshire.
- Rwegoshora, R. (2006), *A guide to Social Science Research*, Institute of Social work Dar es salaam, Tanzania, Mkuki Publishers.
- Saunders, M. (2000), "*Research Method for Business Student*", 3rd Edition, Pearson Education
- Saunders, M. et al., (2007), "*Research Methods for Business Students*", 4th Edition, Financial Times Prentice Hall, Tanzania & Zanzibar Labour Market Profile 2013.
- Temba, M. (2013) *ADR in Settlement of Labour Dispute in Tanzania, South Africa, and Australia: A Comparative Survey*, Open University Law Journal 2013, Vol. 4, No. 1:115-139.

Yin, (2003). Yin, R. (1994), *Case Study Research Design and Methods*, Sage Publications, Wisconsin.

Zikmund, W. (2003), "*Business Research Methods*", 7th Edition, Mason, Ohio.