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An Overview of the Zanzibar Legal System; The Scottish Comparative Perspective

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Abstract

The Scottish Act 2012 sets out amendments to the Scotland Act 1998, intending to devolve further powers to Scotland. The 2012 Act transformed a part of judiciary jurisdiction from a vertical to a horizontal system to ensure that the High Court of Justiciary retained the power ultimately to resolve cases once the Supreme Court has determined the legal question at issue. Under the horizontal system, the decisions are not subject to review by the Supreme Court of the United Kingdom. The said transformation brought a huge discussion within and outside the United Kingdom questioning the system's effectiveness and the union's health. The transformation imitated the uniqueness of the Scottish practice of criminal law and procedure which positively attracted some other states like Zanzibar.

The Zanzibar Tenth Constitutional Amendment, 2010 removed some Union ties to the isles' jurisdiction by drawing the horizontal practices on fundamental rights cases, in other words, the Court of Appeal of Tanzania which is the union organ, has no power to review the decision made by the High Court Judge in any case relating to fundamental rights.

The criticisms and arguments across the globe have proven to have zero risk on legalism no diminishing court jurisdiction on any side of those unions. However, horizontal justice proved to be effective by improving rationalization and providing an innovative opportunity to enforce justice easily and in affordable ways in accessing justice.

Keywords: Horizontal Justice, Judicial Jurisdiction, Vertical System, Fundamental Rights

Introduction

Every country has its legal system, and the municipal laws set the hierarchy of the said courts and the position of final appeal. How a state's legal system is structured do differ from country to country. Usually, the legal system is a foil for other organs of government, which themselves are arranged in a different form. In this article, we focus on two aspects of comparative constitutional design and apply what is relevant. The first aspect is the connection between different levels of judiciary within the United Republic of Tanzania or vis a vis the Zanzibar perspective. The second aspect is the comparative dimension concerns the functional organization of the Court of Appeal as an apex appellate jurisdiction in Tanzania.

Both aspects pointed out above were stretched out from the generalist of Scottish Supreme Court model of the common law world and the more dedicated separation of high judicial authority of the civilian model. Our main issue here concerns the extent to which and how the evolving United Kingdom and

Scottish arrangements continue to obey the rules of the common law type with which they have been so closely historically connected.

This paper considers the study conducted by the Scottish Cabinet Secretary for Justice in 2008 which examined the chronological development of final appellate jurisdiction of the Scottish legal system to identify the recognized constitutional principles of such jurisdiction and to provide appropriate international comparisons. Therefore, certain practices affecting horizontal jurisdiction[1] in the Scottish legal system comparable to other legal systems was evaluated[2].

Akin to the Zanzibar scheme, many of the features that constitute the Scottish system of horizontal jurisdiction have an extensive history[3]. Nevertheless, the recent constitutional developments have tainted some horizontal features and thrown others in a new luminosity. In both systems, those developments gave an improved rationalization and an innovative opportunity to enforce justice easily and in affordable ways.

The Scotland Act 2012 sets out amendments to the Scotland Act 1998, to devolve further powers to Scotland and the Zanzibar Tenth Constitutional Amendment[4] which cut off some Union ties to the isles' jurisdiction making these two systems alike.

Methodology

The analysis of case laws and the collection of data from primary sources and the survey of secondary sources become necessary in this article as required in any doctrinal research to answer the research questions. With this move, a careful review of literature helped to answer the research questions precisely. A survey of experienced people and unstructured interactions with them helped the researcher to portray the facts in more aspect.

Evaluation of horizontal justice

An evaluation of the Scottish and the Zanzibar judicial appellate formations in terms of the horizontal approach highlights some striking features. The Tanzanian Court of Appeal follows the traditional common law model applied under the Supreme Court of England; that is to say, it is highly generalist in the form of an apex court for appeals from across the United Kingdom's and Tanzania's legal systems. A significant exception to this universal jurisdiction is that Scottish criminal appeals cannot be taken to the United Kingdom Supreme Court; though arguably, the devolution issue jurisdiction of the United Kingdom Supreme Court gives that court a limited and indirect criminal jurisdiction in Scottish cases. In this way the regional integrity of Scottish criminal law is recognized, and with that recognition of regional integrity there is also reinforcement at the appellate summit of the single basic functional distinction which runs through Scots law and the Scottish courts system between civil and criminal law.

[1] A horizontal justice system is often portrayed as a circle, for there is no apex judge or court to appeal, but instead appeals lies to the same court

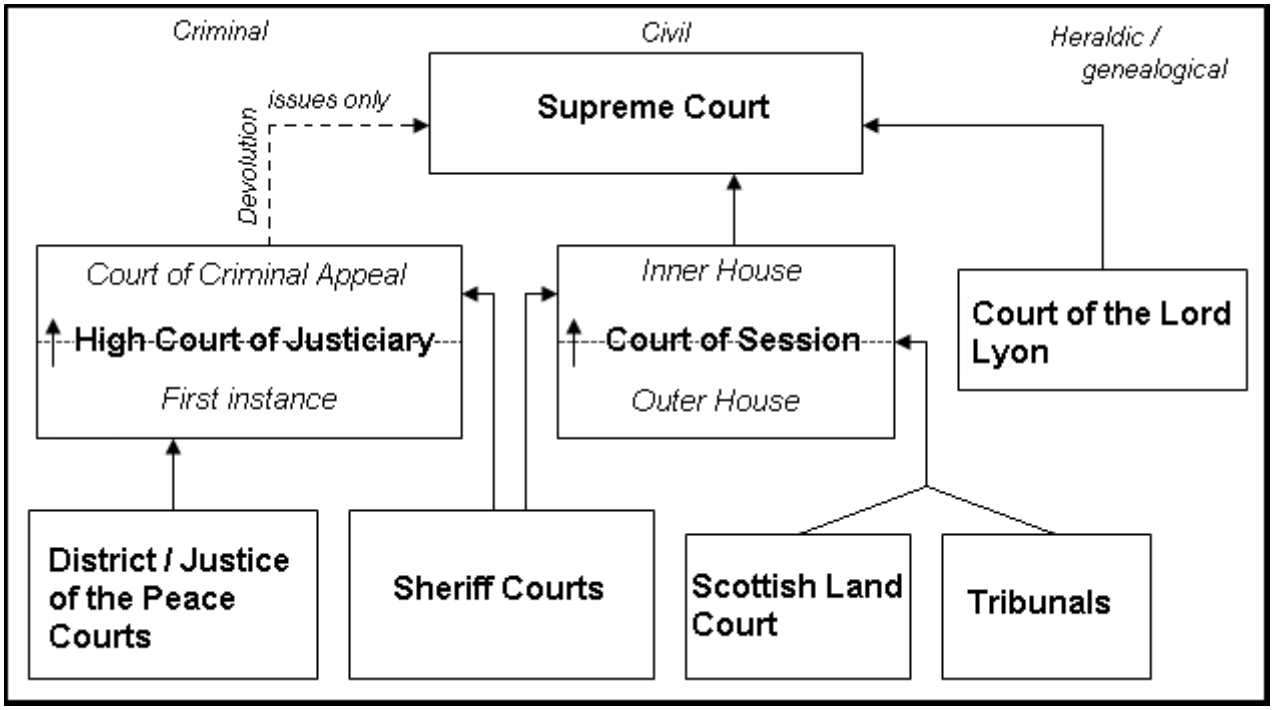
[2] The Scottish Government press release: http://www.scotland.gov.uk/News/Releases/2008/12/15093413.

[3] England and Scotland came together on the 5th May 1707 to form a single Union known as the United Kingdom of Great Britain. The legislation creating the new state, which was passed in both parliaments, contained provisions relating to the institutions of the new state, including those related to the administration of justice in Scotland. The Union legislation specifically provided for the continuing existence and authority of the Court of Session and High Court of Justiciary. The Article of Union clearly expressed that no causes in Scotland be cognoscible by the courts of chancery, queen's bench, common-pleas, or any other court in Westminster Hall

[4] The Constitution of Zanzibar, 1984

One of the questions that needs to be discussed in this paper is whether an Act of the Scottish Parliament to wave the powers of the Supreme Court is within the legislative competence of the Scottish Parliament vis-à-vis Article 24 of the Zanzibar Constitution taking off the power of the Court of Appeal over fundamental right cases in Zanzibar. In discussing the matter, better look at the judiciary systems in both jurisdictions to picture the existence of horizontal adjudication of devolved matters to each High Court.

i. ***Scottish legal system;***

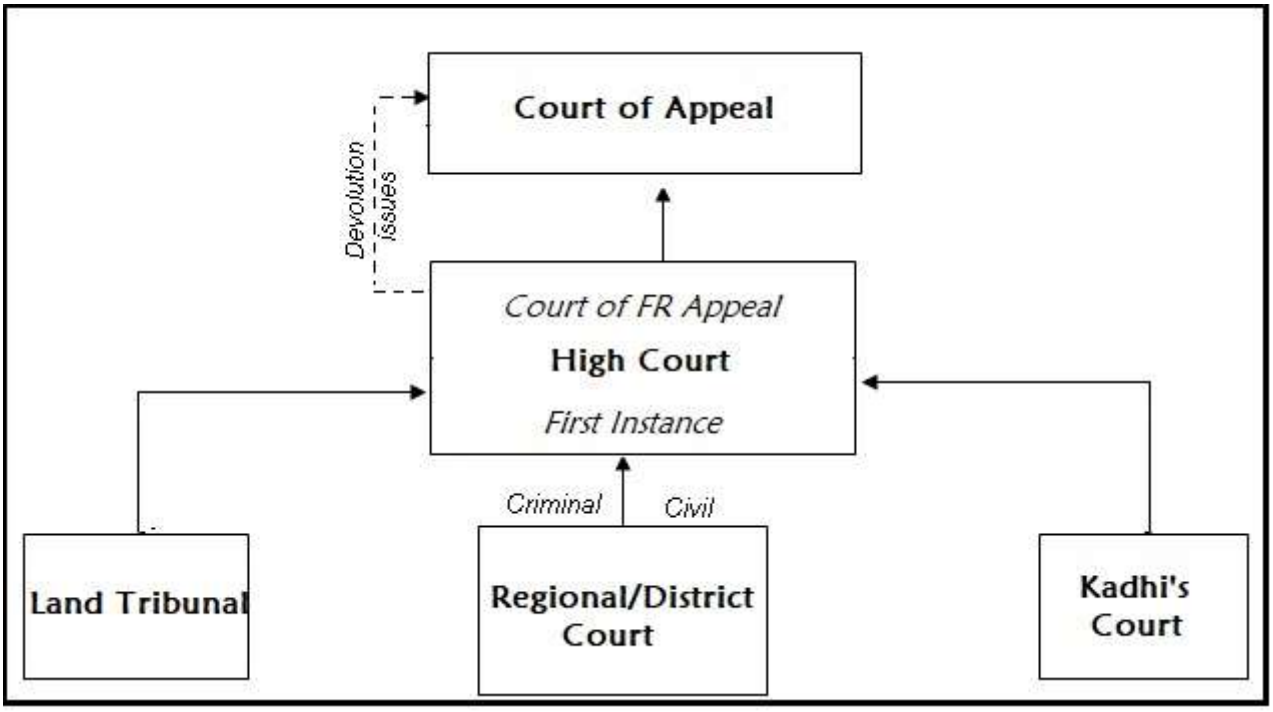


Key lines:

⟶	Issues which are under the vertical jurisdiction, whereby Supreme Court has the power to entertain appellate authority
- - - ⟶	Matters which are not subjected to Supreme Court. Criminal cases are under horizontal adjudication.

The Scottish and UK appellate structure seen in the form of a horizontal axis attracts some prominent features whereby, the Supreme Court itself gives the High Court a limited and indirect criminal jurisdiction in Scottish cases. In this way, the horizontal jurisdiction of Scottish criminal law is recognized, and with that recognition of the mentioned jurisdiction, there is also backup at the appellate point of the single basic practical characteristic that runs through Scots law and the Scottish legal system between civil and criminal law.

ii. ***Zanzibar legal system is as follows***



Key

——→	Cases that go to the Court of Appeal
– – →	Cases which constitutionally excluded from the wing of the Court of Appeal. That's including fundamental rights cases, Constitutional Partitions, cases from Kadhis' Court

The argument raised in this part is to what extent the Court of Appeal can assume the character of a constitutional apex court over all legal systems since it is one sovereign country. The weight of the argument is underlined by the recent amendment of the constitution which qualifies Zanzibar as a country that on other hand merges some of its affairs with Tanganyika forming the United Republic of Tanzania. The Article of Union which is the principal document, retained the judicial supremacy of the isles on non-union matters. It is therefore what was done by the House of Representatives to hold back the constitutional rights appeals not to be filed before the Appellate Court are within its parameters.

Legislative Devolution on Constitutional Powers

According to Michael Keating[5], devolution presents a large scope for the party to make its policies. Legislation supremacy is one measure of this. Scottish laws before decentralization leaned to copy procedures for the rest of the United Kingdom, with differences of style. The legislative consent motions (also known as Sewel motions in Scotland) have not been used to impose policy uniformity in Scotland. There is evidence that decentralization has transferred influence both vertically, between the UK and Scottish levels, and horizontally, within a Scottish legislative system that has been opened up.

The devolution did not depart Scotland from the United Kingdom but, merely upsurged the Scottish Parliament powers to legislate on certain issues within its jurisdiction without needing approval from the UK Parliament.

[5] M. Keating (2010). *The Government of Scotland: Public Policy Making After Devolution.* Edinburgh University Press

The Growth of Tanzania Appellate Jurisdiction

With the collapse of the East African Community in 1977, the Court of Appeal which was serving to the member states *(Zanzibar, Tanganyika, Uganda and Kenya)* also collapsed. The East African Court of Appeal was established in 1902, and it was an appellate court for the British Colonies in East Africa and West Asia. Historically, it was the Appellate court for British Kenya, Uganda Protectorate and Nyasaland. However, the jurisdiction grew to accommodate more countries including Sultanate of Zanzibar, Tanganyika, Somaliland etc. The decision of this court could be appealed with leave to the Judicial Committee of the Privy Council[6]. The collapse of East African Court of Appeal leads the establishment of the Tanzania Court of Appeal in 1979 with the jurisdiction as a union organ and a final appellate judicial body under Article 117 of the Union Constitution.

Comparative Perspectives

The main goal of this paper focused on Zanzibar legal system in relation to the Scottish legal system. To reach the goal, one must stare on two sides of a comparative blueprint of their constitutions and the practice most relevant to the study inquiry. This study wants to scan the comparative outlook of two key blocs of variation within the organisation of a system of courts and appellate mechanisms relevant to our understanding of the Scottish case.

The first bloc of disparity concerns the degree of decentralization within the legal and political order and within the appellate court system particularly. The question around is whether there is a measure of decentralized sharing of courts and of final appellate power. When we think of this, we find that the vertical bloc of deviation draws the scope to which the legal and appellate court system is structured referring to the territorial jurisdiction of constitutional authority and institutional plan. However, the second bloc of disparity concerns the degree of specialism and differentiation of tasks within the appellate formation. Here we need to ask ourselves, is there a single court at the top of the appellate jurisdiction, or there are multiple of such courts with the same jurisdiction dazzling a degree of practical interest within the judicial system? In this aspect, the horizontal bloc of variation plotting the degree of differentiation and organization referring to the subject matter in the appellate court composition positioned at the central level of the state without considering the bond between courts and appellate authority placed at different levels of the state.

These dissimilarities generate three key features and picture out how the Scottish case connects to the Isles' situation. As pointed earlier, Tanzania correspond to such deviation on the theme of decentralization same as United Kingdom. Moreover, these two countries are not federal states as such. The delegated authority vested in Scotland, Wales and Northern Ireland is not, on a legally tongue, the United Kingdom which is the central authority and the final authority retains ability to legislate in any part of the United Kingdom including Wales and Northern Ireland, and without a doubt on any subject. The Scottish Parliament is merely excising the powers devolved to it by the Westminster. In the same situation, this is an expected result of the resilience of the central principle of the sovereignty of the Tanzanians' Parliament. Rather than calling them a federal state, it argued that they are better viewed as a Union state.

From that context, a state which based upon some form of decentralized division of authority, if or not well called federal, will naturally have a judicial system which reflects such decentralization. In this

[6] Ibhawoh B.(2013) *Imerial Justice: Africans in Empire's Court.* Oxford University Press. Oxford

situation, it is possibly more precise to talk about a number of different judicial systems, and a number of different legal instructions which they will administer.

In federal system, each state acquires its own judicial systems which are harmonized by a federal court formation that has jurisdiction over federal matters. However, the jurisdictional autonomy of Zanzibar is diminished by the existence of a Union stream of law which deals with union matters as well as an overarching constitutional stream. The Parliamentary legislation acknowledges the existence of the Union Government which would, at the same time, deal with matters of Tanzania Mainland and Zanzibar. On the other hand, the Zanzibar Government left with exclusive authority on matters specific to Zanzibar, or non-union matters[7]. The said pluralism has imperative consequences on both system autonomy and jurisdictional autonomy. In our case, there is a practically high degree of system autonomy. In particular, the decentralization of legislative power in fundamental rights matters to the High Court of Zanzibar under Article 23(4)[8], has led to an epidemic of recent legislative activity on the isles' legal profession and court system. However, this has merely served to reinforce a distinctive system identity whose roots lie in the isles' sovereign pre-Union polity.

Deliberating the vertical and horizontal blocs from a comparative point of view draws small difference but similarly important tips about final appellate jurisdiction between the Judicial system of Zanzibar and Scottish system. What is more astonishing in each side is the limited extent to which their cases conform to the relative norm. On the other hand, in looking on the vertical bloc, the study has noted the area of doubt in these two systems as between the solid formal jurisdictional autonomy and the substantive movement beyond the union agreement which is typical federal division of power. Coming to the horizontal bloc, in both systems, the study have noted the typical common law resistance with the top courts, but in some extent customized by local features; by barring fundamental rights appellate jurisdiction in the Court of Appeal and by the shift towards a constitutional jurisdiction.

In most of the cases the two systems are related. In horizontal system as an exit path to our final appellate jurisdiction is attached to territorial dissimilarities within the Union. Point to be taken in considering the area of ambiguity over the formal and substantive autonomy of both systems before the Superior Courts, the study recognized that the consequence of this is enlarged by the fact that the Apex Courts remains the most generalist of judicial hierarchy in the sovereigns, competent to pronounce on all matters except those that arise directly in legislative provisions.

Conclusion

The Scotland Act 1998 is the most recent development in the constitutional tale of Scots law and the Scottish legal system. What show to be the successively theme of that story has been the separateness of the Scottish system from those of England and Wales and of Northern Ireland. Yet break up has never been absolute, autonomy never more than comparative. This organic advancement has both been prejudiced by and reflected in the manner in which the House of Lords has exercised its jurisdiction as an appellate court. The House of Lords always reject appeals from the decision of the High Court of Justiciary. What seemed not to be clear and possibly more shocking is the lack of clarity, whether it was the institutional quality or corporate character of the House of Lords as a court. Further, the elusiveness

[7] The Tanganyika and the Union of Zanzibar and Tanganyika Law of 1964, S.5

[8] The constitution of Zanzibar, 1984

and ambiguity at the general institutional level left unsettled certain questions relating to precedent at a more.

On the other hand, extending the wings of the High Court of Zanzibar by giving it the final jurisdiction provides not only an opportunity for cases relating to fundamental rights to be heard and finalized at High Court level and shall not be entertained further outside the archipelago –to the Court of Appeal or East African Court of Justice. Unlike the Scottish system, Art. 24 has indeed helped to promote the level of jurisprudence of justice in the perspective of fundamental rights matters. Moreover, the current system creates an opportunity to the development of jurisprudence of reliability as well as expanding the scope of the High Court in the determination of the fundamental rights cases.

The High Courts of Zanzibar were put on test several times with respect to the bill of rights, and likely the, the High Court showed a competent jurisdiction in determining cases relating to human rights. It has made a huge contribution on the protection of the basic rights and the development of jurisprudence of human rights in Zanzibar.

Taking example of the famous case of *Palm Beach Inn Ltd and Another v. Commission for Tourism and Two Others*[9] where the High Court made a remarkable decision by ruling the matter in favor of the plaintiff who was denied the right of livelihood. The question of livelihood is a fundamental issue as the right to life and is falling under the sphere of the concept of justice. In the protection and promotion of justice, the court

If Scotland and Zanzibar were to appear as an autonomous and sovereign state, then it would be in full democratic control of its own appellate court system. In such position, it is likely that both countries would create an autonomous and self-contained domestic framework of appeal parallel to its autonomous legal order within the territorial borders of their jurisdiction. There are lots of models for a fully selfcontrolled appellate solution, even with comparably small states rising from the union (such like Scotland and Zanzibar) or depending upon the existing countries and its systems of law and of courts (such like Ireland and New Zealand).

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[9]The High Court for Zanzibar at Zanzibar, Civil Application No. 30 of 1994. The applicant was running a tourist hotel in Zanzibar South Region and was known to be supporter to the main opposition political party, the Civic United Front. She was intimidated; her business license was withdrawn by the Revolutionary Government of Zanzibar and was prohibited from visiting the area where her hotel was situated. The High Court of Zanzibar under Judge Lawrence Kannonyele ruled in favour of the applicant ordering the government to issue here with business license and to guarantee both here freedom of movement and her right to property as provided in the Constitution of Zanzibar of 1984.

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