Crime Victims' Remedy against a DPP Decision not to Prosecute in Tanzania

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ABSTRACT:

In Tanzania, powers to decide whether to prosecute or not are vested in the hand of the Director of Public Prosecutor (DPP).Nevertheless public prosecutors are not always as fair as we expect when making charging decision, sometimes their decisions can be influenced with corruption, political affiliation and personal conflict of interest that are likely to affect their impartiality. When this happens victims who are aggrieved by unfair decision not to prosecute have limited remedy to redress their grievances in order to uphold their interests in criminal proceedings. This study intends to analyze the victims' remedy against the decision not to prosecute in Tanzania. Except for judicial review, no other remedy is expressly open to victims. Therefore, for protection of victims' interest an internal review and private prosecution should also be introduced as remedies against a decision not to prosecute in Tanzania.

KEYWORDS: Crime Victims, remedy, Prosecution, Director of Public Prosecutions

1. Introduction

The prosecutor is entrusted with determining on an evidential and public interest basis whether a person should be prosecuted and therefore whether he or she should go forward for a judgment before the courts. There is an obvious need for the prosecutor to ensure that cases are not brought where there is no real evidence, both to ensure that the time of the court is not wasted when there is little prospect of conviction and that innocent people are not unnecessarily put through the strain of a court process.[2] The decision made by the prosecutor often stand at the centre, amidst competing of the interest both to the public desire for justice to been seen to be done and fairness to the public interest. The prosecutor plays a vital role in putting the victims at the heart of the criminal justice system by supporting victims of crime. They are also champions of victims'

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[2] House of common, (2009), The Crown Prosecution Services: Gatekeeper of the Criminal Justice System, 9th Report session 2008-09, House of Common, London, p.5

rights and protect their interests.[3] Though sometimes appears that the prosecutor is caught in the middle of competing interests between public interest and victims' interest as well as personal interest. Consequently, public prosecutors are not always as fair as we expect when making charging decisions, sometimes their decisions can be tainted with bad motives having being influenced with corruption, political affiliations, personal conflict of interest and other factors that are likely to affect their impartiality.[4] When this happen, victims who otherwise aggrieved by unfair decision not to prosecute have a limited remedy to redress their grievances in order to uphold their interests in criminal proceedings. Public prosecutors need not only to protect the victims' interest but also to promote justice and public interest.

A considerable care must be taken in each case to ensure that the right decision is made. Since a wrong decision to prosecute or not to prosecute, both tend to undermine the confidence of the community in the criminal justice system. It cannot be overemphasized that deciding whether to prosecute or not is among the most important steps in the prosecution process and protection of crime victims. It is important to note that such decisions must reflect a sound knowledge of law and careful consideration of the interest of the victims, accused and public at large.

Following an increasing emphasis on victims' interests at the charging stage of a criminal proceeding in recent decades most common law countries have granted crime victims either the right to review decisions not to prosecute or the strong right to private prosecution to respond to public prosecutors' inaction.[5]

This paper intends to analyse the legal remedies available to victims against the DPP decisions not to prosecute particularly when such decision is badly influenced with ill motive without consideration of the guiding principles as provided by the law.[6] Both rights to review the DPP decisions and private prosecution are analyzed and discussed in detail. The focal point is placed in Mainland Tanzania because Zanzibar has a separate legal regime governing criminal proceedings as differentiated from that of Tanzania mainland.[7]

2. Methodology

Victims remedy against the prosecutorial decisions is the main issue of focus into this paper which at the end needs not only to be discussed but also analyzed and recommendation to be given. To achieve the goal of this paper, the legal doctrinal research methodology on which legal

[33] *Ibid*, p. 34

[4] Tian, Li, (2013), "Victims' Opportunities to Review a Decision not to Prosecute made by the Crown Prosecutor", Electronic Thesis and Dissertation Repository. Paper 177 p.1

[5] Kenya, Nigeria, England and Wales are good examples recognize the right of the crime victims to review public prosecutor's decision not to prosecute.

[6] The URT Constitution, (n. 2) above, article 59B(4); see also S. 9 of the National Prosecution Service Act, No 27 of 2008

[7] Tanzania is the union country formed by Tanganyika (Mainland Tanzania and Zanzibar); Criminal proceedings in Tanzania Zanzibar is governed by separate legal regime particularly Constitution of Zanzibar and the Office of the Director of Public Prosecutions Act, No. 2 of 2010.

analysis of the principal legislations and case laws was the focal point. The documentary review approach necessitated the inevitable review of various literatures containing analysis and discussion on victims' right and interests in criminal justice system both through print and online libraries. In exceptional circumstances interview technique was used to complement the documentary review in a bid to assess the practice before the court of law.

3. The Concept of 'decision not to prosecute'

Decisions not to prosecute refers to the public prosecutor's decisions to withdraw charges after the laying of charges or stay a prosecution permanently.[8] Decision not to prosecute can be made in two different ways either through DPP declining to institute the criminal prosecution before the court or entering a *nolle prosequi, (*indefinitely discontinuation of the prosecution). *Nolle prosequi* is the Latin word which means 'I do not want to prosecute or I do not want to continue with prosecution'. *Nolle prosequi* is used in the temporary or total termination of criminal or civil cases before judgment in most of the countries that are within Common law jurisdictions but it is mostly used in criminal trials.[9] In criminal cases, it may be entered at any time before the judgement is delivered either against certain accused, issues or altogether. The effect of a nolle prosequi, when obtained, is to terminate the criminal proceedings for indefinite period, but it does not operate as a bar to any subsequent proceedings against him on account of the same facts.[10]

Decision not to prosecute is legally founded under article 59B (2) of the Constitution of the United Republic of Tanzania,[11] section 9(1) (a) and (d) of the National Prosecution Services Act[12] and section 91(1) of the Criminal Procedure Act.[13] Among of the powers vested to the DPP is to decide whether to prosecute or not and to discontinue a prosecution instituted by any person. These powers of the Director of Public Prosecutions may be exercised by him in person or on his directions, by officers under him or any other officers who discharge these duties under his instructions.[14] Any power exercise or functions performed by State Attorney or public prosecutor are deemed to have been exercised or performed by the DPP himself.[15]

[8]Tian, Li, (see n. 4) above at p. 77

[9]Igwenyi B, (2016), "Jurisprudential Appraisal of Nolle Prosequi in Nigeria," in *Global Journal of Politics and Law Research Vol.4, No.4, pp.10-19, p.1*

[10] Section 91(1) of the Criminal Procedure Act, [Cap 20 R.E 2002]

[11]The URT Constitution, (see n. 6) above

[12] Act No 27 of 2008

[13] Tian LI, (see n. 4) above

[14] See n. 6 above, art. 59B (3)

[15] See n. 12, Section 5(4)

4. Power of the court against *nolle prosequi*

As it has been noted, power to enter nolle prosequi is exclusively vested to the DPP.[16] As far as the power to decide whether to prosecute or not is discretionary in nature. Crime victims are supposed to be legally protected from arbitrary decisions by availing them with sufficient legal remedy to redress their grievances against the decision not to prosecute so as to uphold their interest and justice. Before victim remedies against decision not to prosecute are discussed, it is better to look into the role of the trial court over the DDP powers to discontinue a criminal proceeding.

The trial court is the first and foremost authority to protect the victims' interest in criminal proceeding against the arbitrary decisions not to prosecute. The court has no control over the DPP decision not to institute a criminal proceeding except the high court by way of judicial review. The trial court may only gain such power to control where the matter has been referred to it for determination. Unfortunately, the power of the trial court over the decision not to prosecute is limited to the timing at which the decision can be made.[17] The law governing criminal proceedings in Tanzania does not provide sufficient opportunities for the trial court to control DPP power not to prosecute. Even the Constitution of the United Republic of Tanzania[18] does not limit the power of the DPP to enter nolle prosequi by requiring him to seek permission from the court.

Section 91(1) of the Criminal Procedure Act[19] empowers the DPP to enter nolle prosequi just **by stating** in court or **by informing** the court concerned in writing on behalf of the Republic that the proceedings shall not continue. In effect, courts have been left with no powers to control such power in order to minimize the likelihood of abusing the legal process. The use of words 'stating or Informing' in section 91(1)[20] implicate that the court has no power to reject or otherwise dismiss the nolle prosequi application. In fact it is not an application but rather a notice of discontinuing a prosecution. Not only the court has no power to reject the nolle prosequi but also the DPP is not place under legal obligation to give reason for his decision not to continue with prosecution.

DPP in discharging such powers vested to him is guided to guiding principles as provided under the Constitution of the United Republic of Tanzania.[21] The Constitution provides in exercising the powers conferred, the Director of Public Prosecutions shall have regard to the public interest, the interests of the administration of justice and the need to prevent and avoid abuse of the legal

[16] Supra, (see n. 10) at Section 91(1)
[17] That is nolle prosequi can only be made before judgement is delivered; thus the trial court has mandate to reject or dismiss a nolle prosequi that is made after the judgement. (S. 91(1) of the Criminal Procedure Act, Cap 20 R.E 2002.
[18] *Supra,* (see n. 6)
[19] *Supra, (see n. 10)*
[20] *Supra*, (see n. 10)
[21] *Supra*, (see n. 6)

process.[22] However, basing on this principles, the court has power to use purposive interpretation of the constitutional guiding principles to reject or dismiss a nolle prosequi where seems not to be consistency with the guiding principles. This has evidenced in the High Court of Kenya in the case of *Republic versus Enock Wekesa and Michael B. Watah,*[23]where the learned Trial Magistrate delivered a ruling in which she dismissed the writ of *nolle prosequi* on the grounds that no reasons were given for consideration as required by the provisions of the Constitution of Kenya 2010.[24] The High court of Kenya confirmed the decision of the trial magistrate that reason should be given for *nolle prosequi*. Also in the case of *George Gitau Wainaina v. R*[25] the court held that it should be clear from our above analysis of the material placed before us that we find no place for the intended nolle prosequi in this case and we hold that the said nolle prosequi must be rejected. Despite the fact that these Kenyan case laws are mere persuasive in Tanzania, they still have significance role in moulding the role of the court over the nolle prosequi.

Challenge of nolle prosequi in Tanzania has not attracted a judicial consideration. Though it has been trite principle of law that every decision that seems to affect the public interest or individual rights or freedom must be coupled with reasons for such decision so as to avoid arbitrary decisions. This was propounded in the case *Tanzania Air Services Limited v. Minister for Labour, Attorney General and the Commissioner for Labour,*[26]

> 'where the applicant company, aggrieved by the decision of the Labour Conciliation Board re-instating an employee whose services had been terminated, referred the matter to the Minister for Labour under s 26 of the Security of Employment Act1964, Cap 574. The Minister lawfully delegated his power to deal with the reference to the Commissioner for Labour who confirmed the decision of the Conciliation Board but gave no reasons at all for reaching that decision. The issue was whether the commissioner was under legal obligation to give reason for his decision.'

The High Court held that under s 2(2) of the Judicature and Application of Laws Act, Cap 453, the High Court has power to vary the common law to make it suit local conditions; the conditions of the people of Tanzania make it a fundamental requirement of fair play and justice that *parties should know at the end of the day why a particular decision has been taken*. Therefore, it is currently a settled principle of law that a decision should be backed with reason thereof. However, one can only suggest that the enabling legislation especially the Criminal Procedure Act should draw the parameters within which the Magistrates courts can protect public interest and guard against abuse of the legal process against the public prosecutor's

[22] *Ibid*, art. 59B (4)
[23]Misc Criminal Revision No. 267 Of 2010
[24] Article 157 (11) of the Constitution of Kenya 2010, it is provided as follows:- In exercising the power conferred by this Article, the Director of Public prosecutions shall have regard to the public interest, the interests of the administration of justice and the need to prevent and avoid abuse of the legal process.
[24]Misc Criminal Revision No. 267 Of 2010
[25] *[2008] eKLR*
[26] [1996] TLR 217 (HC)

decisions.[27] That is to say, reason for entering nolle prosequi is the only way the court may determine and satisfy itself that there is no abuse of the legal process.

5. Remedies of the Crime victims against prosecutorial decisions

It is generally agreed that victims have significant interests in criminal proceedings, and the focal point is how to protect these interests effectively. Private challenges to decisions not to prosecute made by public prosecutors have been exercised in a variety of ways, either to protect victims' interests by giving them the right to review such a decision or to promote an equitable criminal justice system by limiting wide discretionary power of the public prosecutors.[28]This part discusses such victims' remedies by analysing the Tanzanian criminal justice system. Among other things, internal review, judicial review and private prosecution as remedies against DPP decision not to prosecute are discussed as follows;-

5.1 Internal review

Internal review is the process of reviewing the decision of a person or body within the same administrative machinery. For purpose of this paper, internal review means a process of reviewing a decision of a subordinate person by his immediate supervisor or special body designated and authorized for that purpose so as to test the validity of the said decision within the prosecution machinery. The internal review system is necessary to reduce the incidents wherein victims seek judicial review in court because most complaints can be addressed internally faster and with less expense for both victims and the justice system.

In England a recent case entitled *R v Christopher Killick*[29]is a milestone case that put forward the implementation of victims' right to seek a review of the decision not to prosecute internally. The Court reaffirmed that it has for some time been established that there is a right by an interested person to seek judicial review of the decision not to prosecute; it would therefore be disproportionate for a public authority not to have a system of review without recourse to court proceedings.[30] An internal review scheme is necessary so that victims do not always have to seek recourse from the court in the form of judicial review.

Here the question is whether a crime victim in Mainland Tanzania can apply for internal review seeking review of DPP decision not to prosecute, and to whom can he apply? Under which law can he apply? In answering these questions, the focal point is placed in analysing principal legislations and case laws. However, the analysis reveals that in Tanzania there is no formal internal review system to review the decisions of the DPP not to prosecute. Neither the

[27]Misc Criminal Revision No. 267 Of 2010
[28]*Tian, Li, (n 2), at p.77*
[29] [2011] EWCA Crim 1608
[30]*Ibid.* para. 48

Constitution[31] nor the National Prosecution Service Act[32] provide for internal review of the decision not to prosecute.

DPP is the head of the National Prosecution Services in relation to prosecution and coordination of investigation duties conducted by the investigative organs.[33] Any power exercise or functions performed by State Attorney or public prosecutor are deemed to have been exercised or performed by the DPP himself.[34] It is provided that in exercising his powers, the Director of Public Prosecutions 'shall be free, shall not be interfered with by any person or with any authority except the president of the United Republic of Tanzania.[35] The implication of this provision is that the prosecutorial decision of the DPP is not internally challengeable. In this regard, it is doubtful whether the guiding principles that the DPP is required to take into consideration in discharging his powers and function can be observed if there is no internal review mechanism to control the abuse of such power. In effect, therefore, absence of the internal review of the DPP decision not to prosecute may not only put victims' interest at stake but also undermine transparency and accountability. For transparency and accountability in a democratic state, it is important to have an internally check and balance of power mechanism so as to avoid abuse of power and protection of victims rights as well as to promote equitable criminal justice.

5.2 Judicial review

Judicial review means review by court (High Court) of administrative actions with a view to ensure their legality.[36]It is a specialized remedy in public law by which the High Court, in case of Tanzania, exercises a supervisory jurisdiction over inferior courts, tribunals and other public bodies.[37] Judicial review is one of mechanisms by which a relatively open organ of the state (the judiciary) can bring to light and to some limited extent, redress the abuse of powers and authority committed by other organs of the state and public officials.[38]

The source and legal basis of judicial review is section 2(2) of the Judicature and Application of Law Act[39]and the Constitution that establishes the High Court as the superior court of record with unlimited original jurisdiction[40] while article 108(2) gives it general jurisdiction in any

[31]The URT Constitution, (see n. 6) above,
[32] Supra, see n. 12 above, section 8
[33] *Ibid,* s. 4(2)
[34] *Ibid,* Section 5(4)
[35] The URT Constitution, (see n. 6) above, art. 59B (4)
[36] Sathe, S. P, Administrative Law, 6th edn, p.216
[37]Nyamaka D. M, (2012), Judicial Review of Administrative Action/Decision as the Primary Vehicle for Constitutionalism: Law and Procedures in Tanzania, p 1, [Online] available at http://works.bepress.com/dmnyamaka/4 accessed on 25th November, 2016 at 9:28am
[38]Shivji I.G, Developments in Judicial Review in Mainland Tanzania, a paper presented in Judge's course on Constitutionalism and Human Rights, 1998, p.2
[39] Cap 453 R.E 2002
[40]*Supra*, (see n. 6), art. 108(1)

matter which in accordance with legal traditions and conventional practices obtaining in Tanzania is to be dealt with by the High Court.[41] This is supported further by article 13(6) (a) which provides for the right of appeal or any other legal remedy against the decision of the court or of the other agency concerned. Any other legal remedy presumably includes judicial review. In effect, therefore, it is submitted that he basis for judicial review is to be found in the constitution of the united republic of Tanzania 1977 itself.[42]

In judicial review, however, the court does not go into the merits of the administrative action rather it is restricted to ensuring that such authority does not act in excess or abuse of its powers. The High Court is given the pride of place and it enjoy a good deal of power to control and review administrative action with the view to redress the abuse of power and authority committed by other organ of the state and public officials.

Judicial review of decisions on whether to prosecute or not made by public prosecutors has traditionally been extremely limited in common law jurisdictions. Charging decision-making falls into the discretionary power of the public prosecutor, which is a branch of government, and therefore reviewing prosecutorial discretion by judges may raise the issue of separation of powers.[43] However, in recent decades, influenced by civil law traditions and the European Union (EU)'s recent practice, the United Kingdom, Kenya, Nigeria and other common law countries have adopted a review system in their domestic system. Some states have provided private challenges to prosecutorial decisions on whether to prosecute in certain circumstances and qualified challengers are not limited to accused persons.[44]

In Tanzania, the exercise of the prosecutorial power is conferred upon the Director of Public Prosecutor for the benefit of the public whose interest he is enjoined to serve. Both the Constitution and the National Prosecution Services Act[45] do not expressly provide for judicial review of the prosecutorial decisions in Mainland Tanzania. Rather the Constitution provides that in exercising his powers, the Director of Public Prosecutions '***shall be free, shall not be interfered with by any person or with any authority'*** and shall have regard to the need to dispensing justice; prevention of misuse of procedures for dispensing justice; and public interest.[46] This provision does not contain any exception, in this regard; therefore, it theoretically ousts the supervisory powers of the High Court over prosecutorial decision though in practice the High Court of Tanzania is so jealous to let its inherent power be ousted. This position was so stated in the case of *Mtenga v. University of Dar Es Salaam*.[47] However, in most countries both common law and civil law have taken positive step to expressly empower the court to investigate whether the DPP is exercising his powers according to the provision of the constitution. Good

[41] Shivji I. G, (see n. 38) at p. 3
[42] *Ibid,* at p 4
[43] Robert J Frater, Prosecutorial Misconduct (Aurora: Canada Law Book, 2009) at 20.
[44] Tian Li, (see n. 4 above)
[45] Supra, (see n. 12)
[46] Supra, (see n. 6) , article 59B(4)
[47] (1971) HCD no.247

example is the Constitution of Zanzibar expressly provides for judicial review of the prosecutorial decisions. As it provides;

> *"In exercising his powers according to the provision of this Article the Director of Public Prosecution is not bound to follow any order or direction of any person or any government department. But the provisions of this Article will not bar the Court from using its power for the purpose of investigating whether the Director of Public Prosecutions is exercising his powers according to the provisions of this Constitution or not."*[48]

This means that the Director of Public Prosecution is not bound to follow any order or direction of any person or any government department, the Constitution of Zanzibar does not bar the Court from using its power for the purpose of investigating whether the Director of Public Prosecutions is exercising his powers according to the provisions of Constitution or not.[49] Unfortunately, the Constitution of the United Republic of Tanzania does not expressly provide for judicial review of the prosecutorial decisions.

Nevertheless, judicial review is the inherent power of the High Court that cannot be ousted without express provision of the statute. As it was reinstated in the case of *Mtenga v. University of Dar Es Salaam*[50] that;

> *"It is trite to observe that a court is, and has to be for the protection of the public, jealous of its jurisdiction, and will not lightly find its jurisdiction ousted. The legislature may, and often does I am afraid, far too often oust the jurisdiction of the court in certain matters, but for the court to find that the Legislature has ousted its jurisdiction, the legislature must so state in no uncertain and in the most unequivocal terms."*

Basing on this position, the High Court is therefore required to exercise its supervisory function to ensure that a tribunal or such body below acts in accordance with the rule of law.[51] Where it is shown that the exercise of the DPP power to enter *nolle prosequi* or not to prosecute was in bad faith, or was oppressive, or capricious or against public interest, the court may intervene to challenge, not his power to enter *nolle prosequi*, but rather the use of that power if it is for public interest[52] or dispensation of justice.[53]

[48] Article 56A (7) of the Constitution of Zanzibar, 2010
[49] *Ibid.*
[50] Supra, (see n. 47)
[51] See the case of Ally Linus and others v. Tanzania Harbour Authority
[52] Supra, (see n. 6), Article 59B(4)(C)
[53] *Ibid,* Article 59B(4)(a)

5.3 Private prosecution

Private prosecution is a criminal prosecution pursued by a private person or body and not by a statutory prosecuting authority.[54]A 'prosecuting authority' includes, but is not limited to, an entity which has a statutory power to prosecute. Private prosecutions provide an important safeguard for the aggrieved citizen against capricious, corrupt or biased failure or refusal to prosecute offenders against the criminal law.[55]The right of private prosecution has been called 'a valuable constitutional safeguard against inertia or partiality on the part of authority. It may also further protect victims' interests as some private prosecutions may be instigated by or on behalf of the victim of an offence if a public prosecution agency declines to prosecute.[56]

In Tanzania, private prosecution is open to the primary court where public prosecutors and advocates are not allowed to appear and prosecute on behalf of the claimant or victims.[57] The right to private prosecution in other courts apart from the said primary court is restricted except with the leave of the court.[58] Nevertheless the provision that allows private prosecution is too vague because it neither defines private prosecution nor gives the circumstances under which a person can apply for. As the Criminal Procedure Act[59] provides that any magistrate inquiring into or trying any case may permit the prosecution to be conducted by any person and such person shall have the like power of withdrawing from the prosecution as provided in section 98 of the Criminal Procedure Act. Nevertheless, the use of the word 'magistrate' implies that private prosecution applies only to subordinate courts (primary, district and resident courts). Since the word magistrate is defined under section 2 of Magistrate Court Act as a primary court, district or resident magistrate, and includes a civil magistrate and a supervisory magistrates. Therefore private prosecution is impliedly excluded before the High Court and Court of Appeal.

The existing right to private prosecution is limited and marginalized to subordinate courts with unclear circumstances where can be applied for and by whom. It is not clear whether can be used as a remedy for the person so aggrieved with the prosecutorial decision not to prosecute or discontinue the prosecution. The spirit of the limitation enshrined under article 59B(4) of the constitution may still impede the subordinate court to interfere with the prosecutorial decision not to prosecute.

[54] Edmond T & Jugnarian D, (2016), Private Prosecutions: A Potential Anticorruption Tool in English Law; Legal Remedies for Grand Corruption, p.1
[55] Gouriet v Union of Post Office Workers[1978] AC 435, 498
[56] Tian Li, (see n.4) above
[57] Section 33 of the Magistrate Court Act, [Cap R.E 2002]
[58] *Supra*, (see n.10), Section 99(1)
[59] *Ibid.*

6. Conclusion and Recommendations

Therefore, it has been revealed that crime victims in Tanzania availed with a very limited opportunity to review the work of an inactive public prosecutor in order to ensure that criminal proceedings are taken against the perpetrator of a criminal offence even if the public prosecutor refuses to institute criminal proceedings or decides not to prosecute in the course of such proceedings. The only legally enforceable right victims have to seek a separate judicial review proceedings.

In regard to the conclusion, this part proposes a series of reforms and recommendation to ensure that crime victims in Tanzania have effective opportunities to challenge unreasonable and incorrect decisions not to prosecute made by public prosecutors. The said recommendations are directed to the government, particularly the legislature and other stakeholders concern, to take necessary step in reforming the legal regime governing criminal proceeding in Tanzania. For the purpose of protection of the victims' interest and promotion of equitable criminal justices system the following recommendations are proposed;

The paper recommends for the amendment of article 59B (4) of the Constitution of the United Republic of Tanzania of 1977 to incorporate an express exception to the court from using its power for the purpose of investigating whether the Director of Public Prosecutions is exercising his powers according to the provisions of the Constitution or not. This exception will be used by victims to challenge the prosecutor's decision not to prosecute where such power is not properly exercised.

Both the Constitution and the Criminal Procedure Act should expressly define the private prosecution as an alternative remedy where the public prosecutor improperly declines to prosecute the crime perpetuators or decide to discontinue the prosecution to protect their interest where it is determined by the court that such decision was made in contravention of the provisions of the law or guiding principles.

Nolle prosequi should only be granted with the leave of the court upon application by the DPP. By so doing the enabling legislation especially the Criminal Procedure Act should draw the parameters within which the Magistrates courts can protect public interest and guard against abuse of the legal process against the public prosecutor's decisions. It should be a mandatory legal requirement for the DPP to provide a reason(s) for his decision to discontinue the prosecution. And the court should be empower by legal provision to reject or dismiss the application for nolle prosequi where there is no sufficient reason to discontinue the prosecution as well as for interest of justice.

Lastly, the paper recommends for establishment of internal review system within the prosecution machinery in Tanzania. A special unit should be established that will be inter alia responsible for reviewing DPP decisions. An internal review scheme is necessary so that victims do not always have to seek recourse from the court in the form of judicial review.

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