THE EFFECTIVENESS OF DISPUTE SETTLEMENT UNDER
THE NEW LABOUR LAWS IN TANZANIA
A case study of the Commission for Mediation and Arbitration
(CMA)
Dar es Salaam
THE EFFECTIVENESS OF DISPUTE SETTLEMENT UNDER THE NEW LABOUR LAWS IN TANZANIA: A CASE STUDY OF THE COMMISSION FOR MEDIATION AND ARBITRATION (CMA) DAR ES SALAAM

By
Pulkeria Melchior Chuwa

A Dissertation submitted in Partial fulfilment of the requirements for the Award of the Degree of Masters of Public Administration of Mzumbe University 2014
CERTIFICATION

We, the undersigned, certify that we have read and hereby recommend for acceptance by Mzumbe University, a dissertation titled; The Effectiveness of Dispute Settlement under the New Labour Laws in Tanzania: In partial fulfilment of the requirements for the degree of Master for Public Administration

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Internal Examiner

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ACKNOWLEDGEMENTS

There were prominent contributions which made by different individuals and institutions during the study. This vital and substantial contribution enabled the completion of this study. While greatly appreciating their contributions. Given a long list I shall endeavour to acknowledge the most important here.

My first and foremost appreciations go to the Almighty God for giving me the strength and courage to pursue my studies and to conducting this research study. I also thank my family for supporting me morally and spiritually during the whole period of my studies and during the research study. Their encouragement, advice and support enabled me to put more effort which enabled me to conclude the study successfully. I am grateful to the CMA Director Mr. Cosmas F. Msigwa for his willingness to sponsor me in this studies. I am deeply indebted to my Supervisor – Professor E.I. Temba. Despite her tight schedule, she spared her time to provide technical guidance for Assistance and advice for the entire work. I would like to take this opportunity to thank her. I extend my heartfelt gratitude to my mother Hyasinta Paul Assenga and my beloved husband Melchior Chuwa for their support morally and materially during the course of my study which I would otherwise not be able to accomplish. My sons Alphonce, Isaya, Frediano Gilbert and Gabriel, who had to tolerate on my absence and missed motherly love and assistance during my busy time of pursuing my study. I also send my special thanks to my late brother - Calisti P. Assenga, for his great encouragement and assistance during this study. Almighty God rest him in peace Amen.

I heartily appreciate the love and courage which had availed me the confidence I needed most from my beloved sons Alphonce, Isaya, Frediano, Gilbert and Gabriel.
DEDICATION

To my Almighty God, my lovely Mother Hyasinta Paul Assenga, and my family.
<table>
<thead>
<tr>
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<th>Description</th>
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<tr>
<td>ADR</td>
<td>Alternative Disputes Resolution</td>
</tr>
<tr>
<td>ATE</td>
<td>Association of Tanzania Employers</td>
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<td>CCMA</td>
<td>Commission for Conciliation, Mediation and Arbitration</td>
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<td>CMA</td>
<td>Commission for Mediation and Arbitration</td>
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<tr>
<td>ELRA</td>
<td>Employment and Labour Relations Act No. 6 of 2004</td>
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<td>FDI</td>
<td>Foreign Direct Investment</td>
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<td>GN</td>
<td>Government Notice</td>
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<tr>
<td>ILO</td>
<td>International Labour Organization</td>
</tr>
<tr>
<td>LIA</td>
<td>Labour Institution Act No. 7 of 2004</td>
</tr>
<tr>
<td>SADC</td>
<td>Southern Africa Development Cooperation</td>
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<tr>
<td>TTCL</td>
<td>Tanzania Telecommunications Company Limited</td>
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ABSTRACT

This study aimed at examining the effectiveness of Disputes Settlement Mechanisms, its Procedures, challenges, in the Administration of the New Labour Laws at the Commission for Mediation and Arbitration. The study was conducted following the general practice of the Disputes Settlement Mechanisms of New Labour law in Tanzania.

Data were collected from 61 respondents who were Mediators and Arbitrators from the commission for Mediation and Arbitration, Advocates, Complainants, Respondents, Personal Representatives and the Trade Unions who usually attend their cases before the Commission for Mediation and Arbitration. Data utilized in this study were obtained from documentary reviews such as legal documents, reports and books and from primary sources using interviews, questionnaires and direct observation. The major findings of this study were the implementing the country’s new labour law, dispute resolution system has been seen as important and vital as a good number of industrial disputes have been determined in speedy compared to the repealed labour laws. The disputes were resolved and justice has now been made more accessible and less costly to the disputants. The possibility for one to institute a case without an assistance of the legal representative has been also observed and the positive ending has been determined. However the study notice some challenges which show that there was a different interpretation of the new labour laws which lead to the conflicting decisions between the High Court Labour Division and the Commission for Mediation and Arbitration.

The study recommended that, for the interested party to be conversant when applying and interpreting laws, the amendment of the new labour laws is important to improve service quality provided by the Commission for Mediation and Arbitration.
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CHAPTER ONE

INTRODUCTION

1.1 Back Ground to the Research Problem

This chapter outlines the process which has prompted this research. It provides the background, statement of the problem, the objectives of the study, research questions and the significance relevance of the research.

Tanzania’s workplace can be made more productive and more competitive internationally by improving labour management relations. Both employers and the employees are interested in avoiding /minimizing industrial disputes at workplace. In an increasingly global economy, unconducive workplace environment affects workplace affects not only the individual enterprises and its employees, but also productivity performance and national economic growth.

The employer and employee relationship is very important and plays a great role in the company performance. This dissertation views that if the employer and employees have a good relationship and work hard for the company improvement, the company will achieve a lot and when cooperate work together thus success profit for stakeholders and employee motivation can improve the situation. From the employee’s point of view, it is all about securing the best possible conditions of living standards for their employee’s living.

The employees and employer’s relationship is one in production or service delivery. In order to maximize productivity, the relationship between employees and employers must be carefully balanced with the interests and rights of both parties to ensure industrial peace, fairness, and equity world work.

The state, also plays its role to facilitate the primary relationship and ensure fair play. The lawmakers must always seek to balance the power and interests in the relationship by enacting laws in favour of the parties in the relationship. The legislations are expected to enhance productivity, facilitate industrial relations/peace and encourage both internal and foreign direct investments. In response to this Tanzania has been striving to make reforms that are more friendly
in the relationships of the three parties’ employer, employee and the state (tripartite).

In Mid-1980 the Government of Tanzania began to implement socio-economic reforms in response to development policies, changing economic conditions globally and strategies as well as the changing market conditions. Such reforms had its roots attached to workers who form the core of socio-economic development of the entire state.

The reforms in the employment/work section like in other sectors were dictated by various factors within the sector and others were external. Internally the laws were too many and outdated, some dated back to the colonial era. These laws had undergone many amendments to the extent that some were extremely difficult to comprehend (Mtaki, 2005). Policies of privatization and liberalization of the economy undermined the effectiveness of the laws on employment standards, eroded workers’ rights and benefits, job security and wage inequality intensified as a result a number of workers were thrown out of employment. Emphasizing on the ineffectiveness of the old repealed laws, the Association of Tanzania Employers (2004) has these remarks. “For a long time ago employers in Tanzania have been subjected to labour laws that made it difficult to do business.” It is contended that, labour disputes took too long to get resolved as it even took decades without reaching a resolution. This had a negative impact to both employers and the employees.

In addition to the problems observed by ATE in the above paragraph, globalization; competitive pressure on trade; finance; production and market also increased. Furthermore, there were also developments within the region of SADC and East Africa that required major review of their labour legislation and develop labour market policies that meet the requirement of the new investment environment with a view of developing a common market and allow labour mobility within member states (Mtaki 2005). Furthermore dispute resolution procedures in the former legal framework were too lengthy and complicated. Studies conducted proved that there were sufferings to families of employees as well as to employers because such laws hindered productivity (Sikalumba, 2003).
In the previous labour law regime, the country witnessed a lot of strikes and lockouts at various workplaces. Following the introduction of the new labour laws and their institutions that provide modalities and procedures to be followed by both employers and employees before instituting a strike or lockout, stakeholders expected the situation to change dramatically even though matters have not been that smooth as the country has recently witnessed strikes from teachers, Tanzania Railway Limited, Doctor strikes, Simba Plastic, Kilombero sugar and the like. Due to such events this study finds it necessary to find out the effectiveness of dispute settlement under the new Labour Law in Tanzania which currently governs the labour sector.

1.2 Statement of the problem

The Parliament of the United Republic of Tanzania in April 2004 enacted two labour laws; the Employment and Labour Relation Act No. 6 of 2004 and the Labour Institutions Act No. 7 of 2004 in order to regulate labour relations. These two Laws came into force in 2006, completely replacing the old, fragmented laws which were seen to be less effective in maintaining the employer/employee relationship.

The importance of the promotion of effective dispute resolution was emphasized as one of the four primary objectives of the Labour Relations.

Among the major weaknesses of the old repealed laws was the manner in which labour disputes were handled. Too ineffective of these labour laws, Nassoro, (2004) had this to say, “The net effect of these statutes was a lot of confusion, overlap and general inefficiency that did not conform well with the development of the employment sector and obviously it was one of the hindrances to the investors”.

The enactment of the new labour laws were the only salvation for the labour sector and for the success of the economic reforms which were in place in the country, and to attract foreign direct investment (FDI). Whereas the Employment and Labour Relations Act (ELRA) provides for the rights and obligations to the employer and employees, good relationship, the Labour Institutions Act No.7/2004, established
the labour dispute resolution machineries such as the Commission for Mediation and Arbitration (quasi judicial) and the Labour Court. The Commission is empowered to mediate and arbitrate labour matters brought before it and also permitted to mediate a dispute that has not been referred to it while the Labour Court is empowered to effect reviews and revision of the awards made by the commission in case either of the parties is aggrieved.

Despite of the effort made by the Government of Tanzania to establish the Commission for Mediation and Arbitration (CMA) to settle labour disputes between employers and employees, but the number of labour disputes increases since 2007 when the Commission established. Therefore, this study intends to find out the effectiveness of dispute settlement under the New Labour Laws in Tanzania.

1.3 General Objective
This study aimed at finding out the effectiveness of dispute settlement under the new labour laws in Tanzania

1.3.1 Specific Objectives
Specifically the study sought:-

a) To examine the dispute settlement process under the new Labour laws
b) To investigate the effectiveness of dispute settlement under the new labour law in the commission for Mediation and Arbitration.
c) To identify success and challenges that face dispute resolution system in the Commission for Mediation and Arbitration.

1.4 General Questions
The main research question was, ‘How effective is dispute settlement under the new Labour Law in Tanzania’?

1.4.1 Specific Questions
The study was guided by the following research questions:
a) What were the dispute settlement procedures under the new Labour Law?
b) Is dispute settlement under the new labour laws effective and exhaustive?
c) What are the challenges in the dispute settlement process under the Commission for Mediation and Arbitration?

1.5 Significance of the study
To demonstrate that a research is worthwhile, it must be relevant to the society being studied. This study is relevant in respect of the following:
Firstly; this study is important because the study would contribute to knowledge and development of literature in the subject area under investigation; and serve also as a basis for further research
Secondly; it would also provide a framework for ensuring effective dispute settlement practices in CMA so as to enhance good corporate governance through transparency and accountability
Thirdly; to the academicians and researchers, through the research findings would be a source of reference. Besides, the study would be a basis for further research and enhance the understanding of the current labour dispute decisions in the workplace as well as at the Commission for Mediation and Arbitration (CMA);
Fourthly; it would enable the government to make appropriate policies and laws in dispute settlement; and the study also would raise awareness and knowledge to readers, and the public when making decisions and choose the necessary forum for mechanisms of dispute resolution.

1.6 Scope of the study
The research was specifically concerned with an examination of the effectiveness of Dispute Resolution in industrial and labour dispute in Tanzania, A case study of the Commission for Mediation and Arbitration (CMA). Taking into account the limited number of words instructeds, and time limits the Researcher focused on key
issues of the problem of dispute resolution under new labour laws and went through other methods applied by parties, e.g. Mediation and Arbitration as well as Court proceedings and the major concern were the mechanisms of settling disputes under the CMA.

1.7 Limitations of the study
Certain limitations were encountered in the course of the study. Notable among them were: difficulties in assessing information, empathy the part of some respondents which were not encouraging, respondents who felt reluctant to respond to the questions which were prepared for the survey.

1.8 Organization of study
This research has been organized in the current chapter as an introduction. The rest of the thesis is structured as follows: The second chapter covers literature review of factors relating to this research. Theoretical issues which were developed based on the literature review were also presented in this study. Chapter 3 is analytical framework and research procedures which illustrated the data and variable used for study. Chapter 4 is finding and discussions. This chapter presented tables with the entire data obtained showing finding on each question. Lastly, chapter 5 presented summary as part of discussion on the results. The findings of the research were discussed in context of its implication, limitation of the study, suggestions for future research and conclusion were also included in the study.
CHAPTER TWO
LITERATURE REVIEW

2.1 Introduction
This chapter provides definition of main concepts and theoretical framework of the problem under study and outlines the provisions related to labour dispute settlement schemes under the repealed labour laws and the new labour laws and a review on the experiences of other countries in regard to labour dispute resolution as provided by other researchers.

2.2 Theoretical Base; Definitions and Interpretations
2.2.1 The Concept of Labour laws
Labour laws are those laws which govern and regulate the relationships between employer on one hand and employees and their associations, i.e. trade unions and employers association on the other side. There are also collective labour laws which govern the tripartite relationship between the employees, the employer and the union. On the other hand individual labour laws reflect the employee’s rights at work and through the contract of work. In explaining this, A.J. Sikalumba (2003) has this to emphasize, “In Tanzania, employment relations are governed by legal rules enacted by the Parliament and those developed by courts”.

2.2.2 Labour disputes
Labour disputes refer to all disputes which are related to employee/employer relationship at the workplace. Graham and Bennett (1998), submitted that labour disputes are those disputes between workers and their own employment, engagement, non engagement or dismissal of workers, allocating of work, a procedural agreement or trade union membership. It has been submitted that, labour dispute simply refers to the differences between an employer and an employee or between trade unions connected with the employment or conditions of labour, economic and social interest of employees Graham and Bennett (1998).

On the other hand, Srivatava (2010) when referring labour dispute as Trade dispute said that, trade dispute means any dispute between employers and workmen, or
between workmen and workmen or between employers and employers, which is connected with employment or non-employment or the terms of employment or the conditions of labour, or any person and “workmen” means all person employed in trade or industry whether or not in the employment of the employer with whom the trade dispute arises.

2.2.3 Dispute Resolution as a System
Dispute Resolution Systems (DRS) is a general term used to identify means of resolving disputes out of court, such as by mediation or arbitration. DRS programs are becoming increasingly important today as parties and the court system alike are now trying to find DRS programs that will take them out of the traditional legal system and solve their disputes in a quick and cost efficient manner. DRS reflects a serious effort to design workable and fair alternatives to traditional civil litigation. Alternative dispute resolution can help the justice system in a country function more efficiently. It often saves costs and time and increases user satisfaction. For cases that go back to court, however, the total cost and time may increase. Alternative dispute resolution can also have indirect benefits. It can increase the effectiveness of courts by reducing bottlenecks. And it can improve trust in the legal system, which may increase foreign investment World Bank group, (2010)

2.2.4 The Effectiveness
Effectiveness is used as a synonym of efficiency in many organizations, but effective means much more than efficiency. Milanzi M.C, (2003) shows the relationship of the two as that Effectiveness is the foundation of the success while efficiency is a minimum condition for survival after success has been achieved. Efficiency is concerned with doing things right. Effectiveness is doing the right things. He also noted that the actual effectiveness of a specific organization is determined by the degree to which it realizes its goals. The efficiency of an organization is measured by the amount of resources used to produce a unit of output. The output is usually closely related to but not identical to the organizational goals. He still emphasized that Effectiveness and Efficiency are interrelated and if the organization is to maintain its existence, it must be both
effective and efficient. Effectiveness is achieved when the organization attains its desired outcome Efficiency on the other hand, is not so simply defined. If we treat the organization as a machine we can define optimum efficiency in an economic sense as the least necessary expenditure of resources to attain the desires outcome. Thus, this study was examining the effectiveness of the dispute settlement under the new labour law in the commission for mediation and arbitration.

According to Labour Institution Act, 2004 the objectives of the commission for Mediation and Arbitration are:
(a) To mediate any dispute referred to it in terms of any labour law.
(b) To determine any dispute referred to it by arbitration if a labour law requires the dispute to be determined by arbitration, or if the parties to the dispute agree to it being determined by arbitration, or if the labour court refers the dispute to the commission to be determined by arbitration in terms of section 94 (3) (a) (ii) of the Employment and Labour Relation Act, 2004.
(c) To facilitate the establishment of a forum for worker participation, if requested to do so in terms of section 73 of the Employment and Labour Relation Act.

Furthermore Section3 (e) of ELRA note that one of the objectives of this Act is to provide a framework for the resolution of disputes by Mediation Arbitration and Adjudication.

2.2.5 Current Dispute Resolution Practice in Tanzania

The labour laws which are currently governing the employment sector in Tanzania are; the Employment and Labour Relations Act No.6 (2004) and the Labour Institutions Act No. 7 (2004). Under these laws, there has been established labour dispute resolution organ that is the Commission for Mediation and Arbitration (CMA) which is the main player in dispute settlement and the High Court Labour Division for adjudication.

Part VIII of Employment, Labour Relations Act (ELRA) (Section 86, 95) is dedicated to the labour dispute resolution. They establish the following processes in
dispute resolution steps; mediation followed by arbitration and ends up with adjudication. Mediation and arbitration are conducted by the Commission for Mediation and Arbitration (CMA) while adjudication is conducted by the Labour Division of the High Court; these are the main processes which dealt under this research.

### 2.2.6 Mediation

In Tanzania context, the Commission for Mediation and Arbitration (CMA), (2012) defines Mediation as, a process in which a person independent of the parties is appointed as a mediator and attempts to assist the parties to resolve the dispute and may meet through discussion and facilitation attempt to help the parties settle their dispute.

In Kenya, Mediation is defined as; a voluntary, non-binding dispute resolution process in which a neutral third party helps the parties to reach a negotiated settlement which, when reduced into writing and signed by all the parties, becomes binding. It is one of the dispute resolution mechanisms known as alternative dispute resolution (ADR), as opposed to the legal mechanisms, such as litigation and arbitration (Overview of Arbitration and Mediation in Kenya, 2011).`

Boulle (2001) defined Mediation; as a process or procedure for resolving existing disputes between the parties who have all along argued with each other as to the liability or otherwise of any one of them in a given dispute.

It has been acknowledged that a mediator should not be part of the dispute and should declare neutrality. Section 14 (1) of the Labour Institutions Act 2004, lists the function of the mediator as; to mediate any dispute referred to it in terms of any labour law; to determine any dispute referred to it by arbitration if, ( a labour law requires the dispute to be determined by arbitration, the parties to the dispute agree to it being determined by arbitration, and labour court refers the dispute to the commission to be determined by arbitration in terms of section 94 (3) (a) (ii) of the Labour Institutions Act 2004) and facilitate the establishment of a forum for
workers participation, if requested to do so in terms of section 72 of the Labour Institutions Act.

2.2.7 Arbitration

Commission for Mediation and Arbitration, (2012) defined arbitration as a dispute resolution process in which a person, independent of the parties, resolves the dispute by determining it. Section 19 (1) of the Labour Institutions Act 2004 states the conditions under which the Commission for Mediation and Arbitration (CMA), may appoint an arbitrator, to hear and decide on any labour dispute referred to the commission for arbitration.

According to Khan (2001) arbitration is a private consensual process where parties in dispute agree to present their grievances to a third party for resolution. On the hand, Avtar Singh (2006) defined the arbitration to mean the submission by two or more parties of their dispute to the judgment of a third person, called the “arbitrator” and who is to decide the controversy in a judicial manner. An arbitration is the reference of a dispute or differences between not less than two parties for determination after hearing both sides in a judicial manner by a person or persons other than a court of competent jurisdiction. The matter in dispute must be of a civil nature. Matters of criminal nature cannot be referred to arbitration.

2.3 Theoretical Framework

Armstrong, M. (2006) outlines dispute resolution schemes as applied in the United States of America and United Kingdom. Mediation is used in U.S.A, while conciliation is used in U.K, the terms are often used interchangeably, and as in both procedures a third party mediates or conciliates the parties in dispute and provides a resolution at the end. South Africa, Lesotho, Namibia, like the UK has opted for conciliation method and has given it a wide inclusive definition, “as a process which may involve mediation, fact finding and recommendations in the form of advisory award”.

There is, however, a deeper underlying difference between the UK and US conceptions of mediation. In the UK model, the mediator, regardless of a directive
or facilitative brief, the mediator is seen as a party that controls the process while the disputants control the outcome (ACAS, 2005). In the US model, the problem-solving approach is associated with active interventions by the mediator to facilitate an outcome, while the transformative emphasizes the mediator's role is helping disputants control both the process and outcome.

The government formed Task Force Report (2003) recommended that, Tanzania need to use “Mediation” because of possible confusion that could arise given the role of conciliation boards that existed under the repealed laws.

With Indian experience, Gupta C.B. (2005) outlines that labour disputes are settled through conciliation by Conciliation Officer and Conciliation Boards, arbitration (voluntary and compulsory) and adjudication (Industrial Court and National Tribunal). The state plays a very active role in the field of industrial relations. Gupta C.B. (2008) argues that, state intervention in industrial relations is considered necessary due to the fact that if the labour situation worsens and the law and order situation gets out of hand, the Government has to intervene and adopt labour policies meant for ensuring industrial peace and social justice. Rwegoshora, H. (2005) emphasizes that, the process of dispute settlement requires all parties to the conflict to be free to associate and negotiate. The employer or employers recognize the other party and that all parties are committed to making the process work. Furthermore, the legal and political environment should be supportive of the process of resolving the dispute at hand.

The promotion of collective bargaining as one of the most important processes of dispute settlement is emphasized by ILO. According to the ILO Declaration, all member states, irrespective of whether they have ratified the relevant Conventions are obliged by the very fact of membership in the organization, to promote and realize the principles concerning the effective recognition of the right to collective bargaining. Reports from International Labour Organization, has it that, in exchange, the employer can expect improved productivity from a workforce with better working conditions (ILO Convention, 1949: No 98).
A labour dispute vary from one country to another and may carry different perceptions. In a very few, but sometimes significant systems, labour disputes are not classified at all. Nevertheless, the intrinsic nature of a labour dispute is such that the dispute will inevitably fall into a certain category, whether intended or not. The classification of labour disputes often determines which resolution techniques are applied (Bpanpain, 1972).

The most common classifications are individual and collective disputes, and disputes of rights and disputes of interests. It is this latter distinction that characterizes the dispute settlement machinery of many countries. ‘Interest’ disputes are sometimes referred to as ‘bargaining’ or ‘economic’ disputes, as opposed to ‘rights’ disputes, sometimes referred to as ‘legal’ or ‘juridical’ disputes (Bpanpain, 1972).

2.4 Types of labour disputes

2.4.1 Disputes of right and disputes of interest

A dispute of right is a dispute concerning the violation of or interpretation of an existing right embodied in a law or individual contract of employment. At its core is an allegation that a worker, or group of workers, has not been afforded their proper entitlement(s). An interest dispute is one which arises from differences over the determination of future rights and obligations (Bpanpain, 1972).

Dominic Daniel, (2007 page 15), in his dissertation submitted in partial filaments of the requirement for the degree of Master of Laws (LLM) of the University of Dar Es Salaam has this to say; labour disputes are of two types namely a dispute of interest and a dispute of right (complaint). A dispute of right is a dispute over a breach of right, may be located in legislation, the common law, a collective agreement or contract of employment. It could also be a dispute over interpretation of a right.

A dispute of interest is a dispute over future rights or future demands related to work, e.g., salaries and better working conditions, like to receive bonus or any other
remuneration, but has not been agreed with the employer. Once agreement is reached, any disputes about the employer’s failure to pay the agreed wage, will be disputed of right. Some jurisdictions define dispute in relation to rights and interests while others do not define the different disputes, but set out different mechanisms for dealing with them. There have been a number of efforts to determine as to whether a dispute is of a right or interest. It has contended that, ‘advancement of case for determining disputes whether it is of right can be done collectively or individually’. (Graham et al 1998)

2.4.2 Collective Bargaining

Collective bargaining is a process where workers and employers sit down regularly to discuss problems that arise from day to day activities. Article 4 of ILO Convention No. 98/1949 stipulates the right to bargain collectively and defines collective bargaining as ‘voluntary negotiation between employers and employers’ organizations and workers’ organizations.

Article 2 of Convention No. 98/1949 provides that ‘collective bargaining’ extends to all negotiations which take place between an employer, a group of employers or one or more employers' organizations, on the one hand, and one or more workers' organizations, on the other. The purpose of collective bargaining is to determine working conditions and terms of employment; and/or regulating relations between employers and workers.

Under the provision of the Employment and Labour Relations Act, 2004 a registered trade union that represent the majority of the employees in an appropriate bargaining unit is entitled to be recognized as the exclusive bargaining agent of the employees in that agent in that unit; and the employer or employers’ association may not recognize a trade union as an exclusive bargaining agent unless the trade union is registered and represent the majority of the employees in the bargaining unit (Section 67.1)
2.4.3 Individual and Collective Disputes
The distinction between individual and collective disputes is less easy to make. One reason for this is that an individual dispute can develop into a collective dispute, particularly where a point of principle is involved, and if it is taken up by a trade union. Generally, one may state that individual labour disputes essentially concern the individual contract of employment (Blanpain, 1972).
A collective labour dispute is one where several employees, who act in combination, are involved. Individual petitioners act in their own names as parties to the litigation. Individual litigants are less likely to be represented by counsel than litigants in collective disputes, who generally are represented by counsel or syndicate representatives (Gary, et al., 2002).

2.5 The Nature of Labour Disputes
The term 'industrial relation' involves various aspects of interactions between the employer and the employees; among the employees as well as between the employers. In such relations whenever there is a clash of interest, it may result in dissatisfaction for either of the parties involved and hence lead to industrial disputes or conflicts. These disputes may take various forms such as protests, strikes, demonstrations, lockouts, retrenchment, dismissal of workers, etc... Gerald Kitabu (2012, September 9-15). When presenting the media seminar by the Commission, Chief Executive Officer Cosmas Msigwa reported that,

“The private security sector has overtaken other sectors in the country in terms of labour relations notoriety, making it the leading sector for having many conflicts between employers and employees. The core reasons are said to be a lack of transparency in contractual agreements, and failure to adhere to labour rules when the terminating contract sector observes asset…He also urged them to exercise transparency when entering into a contract with their employees, in which case the number of cases would go down because in this sector it is employers who fuel conflicts. Many contracts between the two sides vaguely explain to employees and thus when comes to payments, employees often expect more than what their employers are prepared to pay”.

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This argument shows that conflict at work places are inherent future as the employers always work to increase capital while employees fight to earn more remunerations.

2.6 Dispute Settlement Process

2.6.1 Mediation Process

According to K. Krishna Murty, (2010) mediation is a process available to the parties involved in contract negotiations by which an outside party is called in, by a trade union and management to help them reach a settlement. The neutral mediator does not ultimately resolve the dispute, but instead tries to move the parties towards agreement by maintaining communications and suggesting alternative solutions to deadlocked issues.

The function of the mediator is to provide a positive environment for dispute resolution by drawing on extensive professional experience in the field of labour management interaction. The mediator must possess thorough knowledge of the issues, and an ability to innovate solutions to problems. The mediator must be an effective communicator, know the importance of timing and most of all, have the confidence and trust of the party’s. A mediator must possess attributes such as integrity, impartiality, and fairness.

The Employment and Labour Relation Act (2004) provides that it is a fundamental principle of mediation that the parties settle the dispute themselves. The mediation process is a process that is designed to assist parties to a dispute to reach an agreement free of coercion. A party to a dispute is free to agree or not to do so. According to Employment and Labour Relations Act (2004) mediation process is compulsory only to the extent that a party is required only to attend a mediation hearing convened by the commission. Then after that the process is voluntary. No settlement is imposed on the parties and according to law; either party may leave the proceedings at any time. But that party will be encouraged to engage in the proceedings in a genuine attempt to settle. Mediation proceedings are private, confidential and without prejudice.
Section 4 of the Employment and Labour Relation Act, (2004) provides that, whenever any dispute or alleged dispute concerning a labour matter between any employer or registered employers ‘association on the one hand and any employee or registered trade union on the other hand is existing or apprehended, the aggrieved party may refer the dispute to the Commission for Mediation and Arbitration. The dispute shall be referred to the Commission in a prescribed form. Before the commencement of mediation proceedings, the party that made a reference must satisfy the commission that the other party to the dispute has been served with a copy of the referral.

The rationale of the law is to give a prior notice and opportunity for the other party to prepare and answer the case against him and present his own case or controvert the allegations raised against him.

The Constitution of the United Republic of Tanzania,(2005) the provision of Article 13 (6) (a) provides that the right to the fair hearing and the states, that where a person or body is empowered to determine questions of law or facts in circumstances where its decision will have a direct impact on the rights or legitimate expectations of a person, that person should be given adequate notice of allegations raised against him and the right to attend a hearing and present his own case.

Once a dispute properly refers to the commission, under Section 86 (3) of the Employment and Labour Relation Act the commission is required to appoint a mediator so as to mediate the dispute, to decide the time, date and place of mediation hearing. Furthermore the commission has informed the parties of the appointed mediator and of the time, date and place of the mediation proceedings.

The Employment and Labour Relations Act, (2004) Section 86 (5) empowers the mediator to decide the manner in which mediation shall be conducted. But the Act also requires the expeditions’ conduct of mediation proceedings for the mediator should resolve the dispute within thirty days of the referral. However, the dispute resolution may take longer time if both parties to the dispute agree in writing. But
this does not mean that the mediation proceedings shall be carried on for an indeterminable period of time. The Employment and Labour Relations Act, 2004 section 86 (4) requires the mediator to resolve the dispute within thirty days of the referral or any longer period to which the parties agree in writing. Expedition’s conclusion of proceedings is necessary in order that if the chances of settlement seem remote within a reasonable time of mediation, the settlement of the dispute by arbitration or adjudication should not be unnecessarily delayed. This time frame as required, is of importance because the Act prohibits the resort to strike or lockouts before a dispute is referred to the commission for mediation and arbitration and the period set by section 86 (4) of the Act for mediation has not yet expired and/or the mediation has not failed.

According to the Employment and Labour Relations Act, (2004) section86 (6) (a), during the conduct of mediation proceedings any party to the dispute may be represented by a member or an official of the trade union, if the disputant is an employee or a registered trade union, or a member or an official of the employers’ association, if the disputant is an employer. Furthermore, the parties are empowered by section 86 (6) (b) of the Act to engage the services of an advocates to conduct the mediation proceedings for and on behalf of the party represented. This an appearance by the recognized representative or advocate is a lawful appearance and the represented party to the dispute cannot be penalized for not attending the mediation proceedings. This position was emphasized in the case of Sangara v. Farm Vehicles Ltd (1969) EA.588.

### 2.6.2 Stages in mediation in Tanzania

The process of mediation commences when an aggrieved party files prescribed form, namely CMA Form No.1 under section 86 (ELRA) with the Commission.

Before mediation starts, the law requires number of issues to be clarified. The process of Mediation varies depending on the parties involved, the style of the mediator, the nature of the dispute and the circumstances involved. Mediation as a process involves four distinct stages. The ELRA has four stages of mediation.
These are; introduction stage; information gathering stage; exploring options and developing consensus stage and conclusion stage.

**Introduction stage**

At this stage parties are introduced to the language in which proceeding is to be conducted and if there is a need for translation to ensure the presence of an interpreter. The mediator has to declare conflict of interest and has to withdraw from the proceeding, whether or not there is an objection from the parties and if he/she believes that there is a reasonable apprehension of bias or partiality (Rule 10 of G.N 67).

The mediator has to inform the parties of any logistic arrangement and in appropriate circumstances, obtain the commitment of the parties to follow ground rules including the following:-

i. Confidentiality of what is said in the side meeting between the mediator and one of the parties unless it has been agreed.

ii. The mediator will not be called by any of the parties as a witness in any subsequent proceedings.

iii. The proceedings are off record and conducted on without prejudice basis.

iv. The commitment of the parties to respect each other.

v. The parties determine whether or not they wish to settle, but the mediator controls, the process and may decide when the parties meet in a joint or separately. (Rule 10 (6) of G.N 67).

**Information gathering stage**

The mediator gathers information about the dispute from the parties in a joint session by inviting each party to give their views on the dispute, giving each party an opportunity to ask question for clarification and respond to any vision given asking question to the party in an attempt to understand the real interest of the parties, the cause of the conflict and what the party expect to achieve and summarizing the issues that need to be addressed during mediation.
Exploring options and developing consensus stage
The mediator may commence exploring option with the parties either in a joint session or separately with any of the parties depending on which option would best facilitate progress being made and consider the process of establishing a subcommittee from the parties and meeting with the persons or person who provide the mandate to the party. The mediator has to consider the order in which issues are to be addressed, to assist the parties to reflect on the consequences of the choices available to them, to widen the possible range of solution available to the parties, educating the parties by drawing his/her experience in dealing with similar dispute in other areas and inform the parties on the consequences of failure to reach an agreement and compare carefully the cost of settlement against the cost of non settlement.

Conclusion stage
The mediator has to complete the necessary documentation at the end of the mediation, identifying the nature of the dispute and certifying the dispute has settled or not by giving the parties the certificate of settlement or non settlement. If mediation fails to resolve the dispute within the stipulated time, the parties will refer the matter to an arbitrator, and if arbitration fails the dispute will be referred to the Labour Court, a division of the High Court for adjudication. Decision of the Labour Court is final and binding.

2.6.3 Powers and Functions of Mediators
In order to ensure the orderly and efficient conduct of mediation proceedings, section 20 of the Labour Institutions Act, 2004 empowers mediators to summon any person for questioning or to attend the mediation proceedings if that person’s attendance shall assist in the solution of the dispute; or to produce any document or object relevant to the dispute if that person is believed to be in possession of the document or object concerned. The mediator is equally empowered to administer oath or accept an affirmation from any person called to adduce evidence.
Section 20 (3) of the Labour Institutions Act, 2004) empowers the mediator to summon any person who in the opinion of the mediator can assist the CMA to make a just decision. The law further states that any person summoned under the Act shall be committing the offence of contempt of the commission if, without justifiable cause, fail to appear at the place, date and time stated in the summons; or if after having appeared in response to a summons the person fail to remain in attendance until excused by the mediator or by refusing to take an Oath or to make an affirmation as a witness when required to do so by mediator; or if without good cause fail to produce the document or object specified in the summons; or if the person wilfully interrupt the mediation proceedings insult or belittles a mediator, or misbehave in any manner during those proceedings.

During the mediation proceeding, the parties to a dispute sit around the table in the presence of the mediator and discuss the merit of the issues involved in the dispute and about a settlement of the dispute, if possible, trying to adjust conflicting views of the parties presented before him. This obviously is a very onerous task, and requires for its fulfilment a great deal of tact, patience and persuasive power on the part of the mediator. But since the mediator has no coercive powers to force the parties to adopt accommodating and reasonable attitudes or to give binding decisions on the merits of the disputes, the parties are apt to have scant regard and respect for his views.

2.6.4 Consequences of the Party’s Failure to Attend the Mediation
Under section 20 (1) (a) of Labour Institutions Act, the mediator, may summon any person for questioning or to attend a mediation or arbitration hearing if the mediator or arbitrator considers that, that person’s attendance shall assist in the resolution of the dispute; (b) summon any person who is believed to have in possession or control of any book, document or object relevant to resolution of the dispute, to appear before the mediator or arbitrator to be questioned and to produce the book, document or object; (c) administer an oath or accept an affirmation from any person called to give evidence; and (d) question any person about any matter relevant to the dispute. Where a party fails to attend the hearing at the
commencement date and time set for the mediation, the mediator shall wait for a reasonable time so as to give the party an opportunity to attend. Where a party fails to appear at mediation, the mediator has the power to do the following; in case of a complaint, the mediator may postpone the hearing or dismiss the complaint if the referring party fail to attend the mediation hearing or may decide the complaint ex-parte if the other party to the dispute fails to attend a mediation hearing.

In case of dispute of interest, the mediator may postpone the hearing or may extend the 30-day period by a further 30 days where a party referring the dispute fails to attend a mediation hearing during the initial 30-day period. Or shorten the 30-day period where a party to the dispute other than the party referring the dispute fails to attend the hearing. (CMA, 2012)

2.6.5 Setting aside of Mediator’s Ex-Parte Decisions

An order or a decision given when the Commission has made its decision by considering evidences of one party to the dispute is referred to as an ex-parte order or decision as the case may be. The ex-parte order or decision may be reviewed by making application for review to the Commission for Mediation and Arbitration. In the application for review, the applicant must give good reasons for requesting the Commission to review its decision on the dispute. It is a legal requirement that a party making application for setting aside the award or an order made ex-part should serve a copy of the application to the other party, so that the other party will have the opportunity to object or accept.

It is important to stress that, the only institution allowed to set aside ex-part decision reached by the Commission is the Commission itself and not otherwise. Section 87 (5) of the Employment and Labour Relation Act, (2004) is the reference authority to support this submission. The High Court, labour division upheld this position in the Revision No.264 of 2008 Director Farm Plant Ltd Vs. Anatoli Shio and 5 others. In this case, the applicant filed an application for revision of the CMA decision to the High court to challenge the ex-part award procured by CMA. The application had no merit, therefore, was dismissed accordingly. Briefly the facts of the disputes
were that the applicant failed to attend the hearing session of the dispute, hence the commission decision. Moshi J; as he then was held that the present application had been wrongly bought with the court. The judge argued that, applicants had to apply to the CMA to set aside its ex-part award as per section 88(8) of ELRA No. 6 of 2004 as amended by Act No. 2/2007.

In order to avoid situations like the one in Revision No.264 of 2008 Director Farm Plant Ltd and Anatoli Shio and 5 others, it is therefore recommended, that the commission should not hear the dispute without prior notice being properly served to the opposite party, for he may wish to resist the application and may indeed have good grounds for doing so. Consequently the commission is advised to include a provision, requiring notice to be served to the opposite party prior to the determination of an application to set aside an ex-party decision, when publishing the rules to regulate the practice and procedures for mediating disputes.

2.6.6 Concluding the Mediation Proceedings

The essence of mediation is a compromise. The mediator does not make a decision; rather his function is to persuade parties, by proposals and arguments to reach compromise. As observed earlier, the task of mediator is to try to bring about a settlement of the dispute by adjusting conflicting views of the parties. However the recording of compromise is a matter reserved for parties to the dispute for the mediator has no power to coerce the parties to reach a settlement or give binding decisions on the merits of the dispute.

Since mediation process rests on the spirits of concession and compromise as a foundation upon which the whole edifice is built, the proceedings will be deemed to have concluded that; in case a settlement of a dispute has been arrived at, the certificate of settlement is signed by the parties, otherwise in case no settlement is arrived at, by referring the matter for arbitration if the matter is one which is reserved for arbitration or by referring the matter to the Labour court if the dispute is required to be determined by adjudication.
2.6.7 Benefits of Mediation

Mediation has a lot of benefits. Avtar Singh (2006) identified four benefits of mediation as follows: informality, privacy, time and cost saving and control, flexibility, usually settle or help to settle the disputes on the way to court. It is a natural to respond to the court length perceived risks and loss of control associated with litigation. A brief explanation of the same is given below:

a) Informality no court rules or legal precedents are involved in mediation. The mediator does not impose a decision upon the parties. As opposed to adversarial forums the mediator helps maintain a business-like approach to resolving a dispute. There are no fixed solutions in mediation. Parties' can look to developing creative solutions to resolve matters and the solution rests with the parties themselves.

b) Privacy and confidentiality, the mediation conference takes place in a private setting such as a conference room at any of the Arbitration Associations. Mediation is not a matter of public record. Its confidentiality is maintained.

c) Time and Cost Savings, mediation generally lasts a day. Complex matters may require more time due to highly technical issues and/or multiple parties. Without the formalities found in litigation, mediation usually result in substantial cost savings.

d) Control; parties have control over their participation in mediation. A party can decide to terminate their participation at any point in the mediation. The mediator’s help parties maintain control over the negotiation that takes place.

2.6.8 Arbitration Process

Arbitration is defined as a private consensual process where parties in dispute agree to present their grievances to a third party for resolution Khan (2001) Ideally, the dispute or grievances of employees should be resolved by management and employees themselves but in practice, the two often cannot reach mutually satisfactory agreement. If this situation appears, then the parties to the dispute find
themselves in a power struggle, therefore the need arbitration arises. M J Jucius, (1971) has this to say, “In arbitration the service of an outside third party is thought to settle the grievance. The assumption is that an impartial competent outsider can render a fair verdict not attainable from the parties themselves because of their prejudiced viewpoints are highly emotionalized stands”. Avtar Singh (2006) said that, arbitration is a method of settlement of disputes by way of an alternative to the normal judicial method which is activated by instituting legal proceedings. Therefore, arbitration is a method of alternative dispute resolution mechanism (ADR) like conciliation, mediation, negotiations, etc. Arbitration has become a most dominant form of ADR.

TTCL Trade Union Leaders in their Workshop on New Labour Laws (2006) said that arbitration is a procedure whereby a third party (whether an individual arbitrator, a board of arbitrators) to take a decision which disposes of the dispute. If a decision concerns a legal dispute and involve deciding the rights and obligations of the parties, it is similar in function to adjudicate. If it concerns an interest or economic dispute, it involves replacing negotiations by an award considered by the third party to be appropriate. In both cases, even if the arbitral award is obligatory under the law, it is usually not the executor (as in a judgment of a court of law) but is similar in the legal nature to a legally binding collective agreement and a party will have to seek its enforcement before the courts of law. In Tanzania this can be done under section 89 (2) of the Employment and Labour Relations Act (2004), where the Act states, ‘an arbitration award made under this Act may be served and executed in the labour court as if it were, a decree of the labour court’.

2.6.9 Compulsory Arbitration

When mediation machinery fails to bring about a settlement of a dispute, the provision of the Employment and Labour Relation Act, 2004 provide for arbitration of industrial dispute by an arbitrator appointed by the commission section 88 (2) of the Act. Once the commission has appointed an arbitrator, the
The appointed arbitrator shall further determine the time, date, and place of the arbitration hearing and advise the parties accordingly.

According to the law governing employment in Tanzania, it is not a prerequisite that an arbitration proceeding must always be initiated after the mediation process has reached a deadlock by parties failing to settle their disputes. Section 12 of the Labour Institution Act (2004) empowers the commission to appoint a mediator who may equally act as an arbitrator over the same dispute. And furthermore nothing shall prevent the commission to fix the time, date and place of the arbitration hearing, which may coincide with the date of the mediation hearing as provided by section 88 (3) of the Labour Institution Act (2004)

The law does not set the time limit within which arbitration proceedings are to be determined. However, according to section 88 (4) of the Labour Institution Act (2004) the appointed arbitrator is vested with discretion to conduct the arbitration in a manner considered to be appropriate with a view of fairness and the expedition determination of the dispute. In addition, the provision of the Employment and Labour Relation Act, Section 88 (4) (a) provides that, the arbitrator is enjoined to deal with substantial merits of the dispute with the minimum of legal formalities. Thus, according to Article 107 (c) of the Constitution of the United Republic of Tanzania, irregularities in adhering to the rules of procedure by one party should not act to deny justice to that party if no injustice will be occasioned to the other party.

During the arbitration proceedings the parties are allowed to give evidence, to call and examine witnesses and to present arguments, section 88 (5) of the Employment and Labour Relation Act, 2004. Section 88(7) of the Employment and Labour Relation Act, 2004 provides that the appearance before an arbitrator may be by the parties’ personal capacities, by advocates or by a member of the party’s trade union or employers’ association.
2.6.10 Process/stages in Arbitration

Introduction

The arbitration starts with an introduction where the parties are introducing themselves and welcomed by an arbitrator who then explain the arbitration process to the parties. An arbitrator has to disclose Interest if at all any. The arbitrator deals with preliminary issues.

Opening Statement

The parties are afforded opportunities for opening statement and to provide issues in dispute and provide an indication of the narrow down the issues and facts outcome sought.

Mediation – The arbitrator before starting the arbitration proceedings, seeks the opinions of the parties intention to settle the dispute if at all necessary but should be agreed by the parties.

Evidence- Parties are required to prove their case through evidence. Witness and document may be used as evidence, the parties have to be given an opportunity to reinstate issues in a dispute; provide facts to be accepted by the arbitrator and Submission regarding the outcome.

Award - The arbitrator issues a decision in a form of an award. The award has to include; Details of parties, hearing and analysis of evidence and argument, Order (outcome of the arbitrations). The award has to be issued within 30 days from the date arbitration ended.

2.6.11 Consequences of Not Attending Arbitration

If the party referring the dispute to arbitration fails to attend the arbitration proceeding without notice, the arbitrator may dismiss the case. If the respondent fails to attend, the arbitrator will precede an expert (in the absence of the other party) after a proof that the other party was properly served with a summons. At this stage the arbitrator will make a ruling clearly giving reasons in support of his decision. The party aggrieved by the ruling of the commission may only apply for setting aside the decision of the commission to the commission, and not to the high Court. This is the position of law, which non compliance will render the application
futile. Our Labour court have been stressing this position and, In the Revision No. 264 of 2008 concerning: Director Farm Plant Ltd v/s Anatoli Shio and 5 others, the applicant filed an application for revision to the High Court to challenge the ex-part award procured by the CMA. The court held that, the applicant had to apply to the CMA to set aside its ex-part award as per S. 88 (8) of ELRA No. 6 of 2004 as amended by Act no 2007. For the sake of clarity the decision of CMA is final and conclusive as the party aggrieved by the decision of the arbitrator can only apply for revision/review to the Labour Court and not appeal.

2.6.12 Powers and Function of an Arbitrator
An arbitrator appointed to conduct arbitration proceedings is vested with immense powers. These powers are substantially similar to those of the mediator and generally are of judicial in nature. Thus, according to section 20 (1) of the Labour Institutions Act (2004) an arbitrator may enforce the attendance of any person and examine him on oath, compel the production of documents or any object in possession of any person and related to the matter in dispute. However, the Labour Institution Act, 2004 is silent as to whether an arbitrator may issue commissions for the examination of witnesses, receive evidence taken on affidavit or enter and inspect the premises and establishments to which the dispute relates. The provision of section 20 (3) of the Labour Institution Act (2004) makes it an offence and contempt of the commission for any person who does or omits any of the acts provided for in paragraph (a) to (i) of such subsection.

2.6.13 Arbitration Award
Section 88 (9) of the Employment and Labour Relation Act (2004) provides, among other things, that the arbitrator must issue an award within thirty days of the conclusion of the arbitration proceedings. The award must be signed by the arbitrator who should indicate the reason for the decision made. It is submitted that a reasoned decision provides considerable assurance that the decision will be better as a result of its being properly thought out. Reasons will enable a person, who has a right of appeal or revision to the Labour Court, to determine whether or not he has
good grounds and the strength of the case he will have to meet in case he seeks the intervention of the Labour Court.

Section 89 (2) of the Employment and Labour Relation Act (2004) the arbitrator’s award can be served and executed in the Labour Court as if it were a decree of the court of law. However, section 88 (8) of Employment and Labour Relation Act, 2004 provides that, the arbitrator may not make any order as to costs unless is on considered view that the party acted in frivolous or vexatious manner.

Section 91 (1) (a) of the Employment and Labour Relation Act (2004) allows any party aggrieved by the arbitration award to make an application to the Labour Court set aside within six weeks of the date that the award was served on the applicant unless the alleged defect involves improper procurement. However the applicant should have good reasons (which the case stands for proof to Labour Court) for the application to be considered. As the law under section 91 (1) (b) of the Employment and Labour Relation Act (2004) provides the ground upon which the applicant seeks to challenge an award is based on improper procurement the period within six weeks of the date the applicant discovers the alleged defect. The application to challenge the award of CMA shall be lodged with the Labour Court. Upon receipt of the application, The Labour Court may set aside the arbitration award if satisfied that there was a misconduct on the part of the arbitrator or if the award was improperly procured as provided for under section 91 (2) of the Act. However, scrutiny on the proceedings and powers of the Labour Court are subject matters of the succeeding party.

2.7 Challenges Encountered in the Dispute Settlement Process
ILO, 1977 in Grievance Arbitration a practical guide, argued that, the success of the grievance arbitration depends on the commitment of the parties themselves and of the arbitrator they select to achieving a manifestly equitable settlement of grievance dispute. This fact should govern the conduct of arbitrators whenever there may be a temptation to allow certain consideration of expediency to influence the content of an award. On some occasions the parties will approach the arbitrator after the close
of the hearing but before the issue of the award with a request for a specific award which was not previously mentioned. This is one of the biggest challenges which face arbitrators and results to the ineffective and injustice award.

Among the challenges encountered in the dispute settling process include the disclosure F. M. Temba, (2010) when comparing dispute resolution in CCMA South Africa, CMA Tanzania and AWA Australia, identified the following challenges;

(i) Delay of cases; Instead of conciliation taking place within 30 days of referral as required by the LRA, this period is exceeded in busy regions like Gauteng. In Tanzania the situation is the same in the busy cities of Dar Es Salaam, Mwanza and Arusha. Furthermore, the waiting time for arbitration is recognized as a serious problem. The problem is, however, that in practice the arbitration process has assumed a very legalistic and technical character, the process to finalize a dispute has become very time consuming and with the increasing role of labour lawyers, it has also become an expensive system. Financial constraints in Tanzania have hindered the development of the commission’s website where one may access information about its operation. Financial constraints make it hard for the CMA to perform its duties effectively in terms of research and speedy determination of disputes. In addition the commission does not have offices in all the regions.

(ii) Representation; 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. The idea was to have only the disputing parties involved in the conciliation process, thereby keeping proceedings informal by virtue of their lack of legal training.

(iii) The expedition of process. The reason for establishing the FWA, CCMA and CMA aimed at achieving the dispute resolution system which yields results expeditiously. However, this is the reason behind any introduced ADR system, it has
been argued that the need to handle too many conciliations/mediations in a short time can result in superficial settlements which fail to address the underlying causes of conflict or the real needs of the parties. The guidelines for the conduct of mediation, conciliation and arbitration under CMA provides for the four stage process. However, taking into account the need for result to be expeditiously delivered, it is likely that the mediators instead of searching for optimal solutions they deal with compromise. Too much haste also encourages too much involvement by the conciliator in the substance of the dispute. This undermines perceptions of independence and impartiality and ultimately compromises the legitimacy of the process. It also affects the degree to which parties are prepared to comply with settlements reached in conciliation. These failures in conciliation cause people to question its overall efficacy.

(iv) The use of the right to review to get justice is being exploited, but the remedy of the review, which may order the case to be determined afresh by the commission has undermined the importance of the use of ADR to achieve informal, expeditious and cheap dispute resolution scheme. For instance in the case of Shoprite Checkers (Pty) Ltd v CCMA143 the employee was dismissed for misconduct after he was caught eating food (belonging to the company) at the end of November 2000, the case passed through numerous reviews between the CCMA and the Labour Appeal Court subsequently the case took more than seven years until 2009 when Supreme Court of Appeal gave its judgment by noting the failure of attaining cheap, expeditious and easy access to dispute resolution procedures under the LRA regime. The problem is not on the right of review, but it is suggested that when exercising the right to review the labour courts in both South Africa and Tanzania are supposed to be guided by the tenets of the introduction of these commissions so as to avoid a very prolonged process in determining the rights of employees.

(v) The quality of arbitration awards, a lack of logic and unacceptable levels of spelling and grammatical errors. For instance, is South Africa some CCMA arbitrators are arbitrating without any formal legal training and experience and initially with only five days of substantive training on the LRA and five days
training in arbitration process. In Tanzania some commissioners are not conversant with labour laws and those with the general idea on labour laws or dispute resolution are not trained in resolving disputes by mediation and arbitration.

(vi) Lack of legal knowledge and training in conducting mediation and arbitration is evident in a decision by the Commission. For instance rule 32 of the Labour Institutions (Mediation and Arbitration) Rules requires the arbitrator to keep a record of the arbitration proceedings, but this has not been made by the arbitrators as was in the application between W. Stores Ltd V George Wandiba and 2 others. Revision No.26, (2007) Due to this problem been repeated in most of the matters before the CMA, the High Court in the review of arbitration awards in the case of Bidco Oil and Soap v Abdu Said and 3 others Revision No.11, (2008) held that proceeding of arbitration are quasi-judicial proceedings, and should be based on a record properly kept for that purpose. This is a barrier to the development of jurisprudence in labour law.

2.8 Empirical Review of Past Studies

Over several years judges and other learned brothers and sisters of the law have been studied on designing of the effectively disputes settlement mechanisms and its applicability and administration in order to resolve employers and employee disputes so the Tanzania’s workplace can be more productive and more internationally competitive by improving labour management relations. Most studies have been made relating to the designing of an effective disputes settlement mechanism, in the report of the Task Force on Labour Law Reform (2003) to the Ministry of Labour, Youth Development and Sport, as then was, pointed out that there is an urgent need for an effective and efficient system of dispute prevention and resolution, that the disputes must be dealt with as early as possible and as quickly as possible, mediators, arbitrators and adjudicators of labour disputes must be legitimate, independent and professional, the system must be independent of political involvement, procedures must be simple, user friendly and fair and the decision must be predictable, just and final.
In his report, Makaramba (2009) presents the different systems of dispute settlement mechanisms, suggesting that the disputes should first be resolved by mediation or conciliation or arbitration. This means there is third party intervention and encourage flexibility and compromise to help the parties resolve the dispute themselves.

The report by the Global Justice Solution (2010) presented that, for an effective alternative dispute resolution (ADR) (that is mediation, arbitration and conciliation), there should training for enhancement to Judicial Officers in Tanzania. It should be noted however that the strategy of alternative dispute settlement should be developed for sustaining training in Tanzania and there is a need to be further refined taking into account information from the client concerning, inter alia, the available resources and needs. He further presented that an alternative dispute resolution Case Management Officer should be appointed by the Chief Justice to manage and record cases within the ADR system, monitor mediation progress and identify any emerging issues or shortfalls within the ADR mechanisms.

One of the studies which focused on the mechanisms to resolve workers disputes was conducted by Cyprus (2007), who investigated the dispute resolution mechanisms that practiced in Europe and outlining the relevant ILO standards and shows how government agencies have effectively intervened to prevent and to resolve collective labour disputes. One of the interesting findings of this study, in the light of dispute settlement mechanisms, is that the kind of dispute often has important legal and strategic consequences for determining the methods of resolving it. In the case of right dispute where there is a valid collective agreement in force, this same agreement might include provisions setting out the mechanisms the parties must follow in the event of a dispute. However, none of the studies has actually quantified the exact length of the applicability and administration of the mechanisms.
Other criteria have also been examined to dispute settlement mechanisms. In his study, Penhoet (1999) found the relevance to the selection and design of dispute resolution procedures. Although the parties may anticipate viewing their interests in any particular case as opposed, important shared values and interests should bring them together to develop and then employ a dispute settlement procedure that maximizes their abilities to continue to work cooperatively and adaptively in the precautionary management. Disputes settlement procedures should operate efficiently (minimizing the duration and expense of proceedings), and should maintain some flexibility in its procedures to respond effectively to different types of situations. Their conclusion was that there should be a number of useful mechanisms and techniques that negotiators can employ and flexibility of the designed procedures, need to minimize costs in the interest of efficiency.

2.9 Historical Development of Labour Dispute Settlement in Tanzania
Labour dispute in Tanzania start from the period between colonial and post-independence. For the purpose of our study the author made reference to; The Employment Ordinance (Cap 366), the Security of Employment Act (Cap. 574) and the Industrial Court Act, 1967. All these established substantive and procedural provisions of labour dispute resolution processes, these were the repealed old witch, Mtaki, C (2005) argues that, “In many case dispute resolution procedures were too lengthy and complicated, cases could take even a decade before a resolution was reached”, thus causing a lot of sufferings to families of affected employees as well as loss to employers in regard to productivity. The writer also intends to make reference to various judicial authorities which in her opinion are relevant for the purpose of this task. This position was also echoed by, Shivji, I. (2003) who, identified a range of weaknesses in the old laws, e.g. a congestion of cases in the court, which could be attributed to the backlog of cases, long delays and frustrations in the system. Hence he recommended for an urgent need for an effective and efficient system of dispute prevention and resolution processes.
2.9.1 The Security of Employment Act of 1964

The Security of Employment Act of 1964 was specifically meant to cater for the disciplining the employees. Dispute settlement procedures under this Act, were too cumbersome with inherent shortcomings. In support of this contention, Nassoro, H. (2005) has this to say,’ both employees and employers did not like most of the provisions of this Act, while the title was meant to secure the tenure of employment, the actual provision and dispute settlement pattern did not deliver that promise, rather they simply provided for the procedure through which the employer could properly and effectively exercise the right to hire and fire at will’.

The list of offences under which the employer could summarily dismiss employee was too long and arbitrary (second schedule of the Security of Employment Act, 1964). To employers the law was offensive because, the lengthy and sluggish disciplinary procedure effectively inhibited productivity and discipline at work places, coupled with uncertainty of the outcome and financial implications (Mhina M 2001). The whole system was unpalatable to employers. This had a great challenge to an employer as it was not possible to know exactly if he has effectively dismissed or terminated an employee as the Conciliation Boards or the Minister responsible for labour could order engagement or reinstatement five to ten years later.

The Industrial Court Act, 1967 established another scheme for dispute settlement. This was confined to collective disputes involving several employees as opposed to individuals. Industrial Court had judicial powers to hear and determine disputes between employees and employers through their trade unions. The main challenge remained to the number of few cases taken to the Industrial Court. The court was most of the time idle as cases referred to this organ were very few and it remained as a rubber stamp for giving awards for collective Agreements only.

The challenge under Security of Employment Act was that, it did not provide legal criteria through which Labour officers and the Minister could follow in arriving at a
resolution of a dispute, while the Industrial Court could only determine collective disputes and those disputes concerning management cadre. This segregation of the type of employees to be attended by the Industrial Court, denied lower cadre employees the right to refer their cases to the court which had judicial powers unlike the conciliation boards and the Minister.

According to Mtaki C (2005), the industrial relations were weak and bureaucratic incapable of adapting to the demands of the market. The new institutions have put in place policies and regulatory structures which would promote good governance, poverty reduction, sound labour relations, labour productivity, job creation and promotion of employment (Mtaki, 2005).

2.10 Commissions for Mediation and Arbitration
The Commission for Mediation and Arbitration (CMA) is empowered to mediate and arbitrate labour disputes within a given time frame. Prior to the creation of this machinery as argued earlier, it was normal for disputes take as long as a decade to be resolved. It should be noted that one of the key incentives for employers, employees and the investors is the presence of clear, time conscious, just, and effective dispute resolution mechanism. Therefore, this study basically investigates the effectiveness of dispute settlement under the new labour law.

2.10.1 Functions of Commission for Mediation and Arbitration CMA
The Commission for Mediation and Arbitration CMA has mandatory as well as permissive functions. Mandatory functions refer to those activities, which the CMA must, by law, carry out. A permissive function refers to those activities which the CMA may under the law, discharge.

The mandatory functions, as provided for under section 14(10) are to Mediate any dispute referred to it in terms of any labour laws; determine any dispute referred to it by arbitration if a labour law requires the dispute to be determined by arbitration; the parties to the dispute agree to it being determined by arbitration; the Labour Court refers the dispute to the Commission to be determined by arbitration in terms
of section 94(3) (a) (ii) of the ELRA and facilitate the establishment of the forum for workers participation, if so required in terms of section 72 of the ELRA.

The permissive functions are provided for under Section 14(2) of the Act which provides that the Commission may; Upon request, provide employee, employers and registered organizations and federations with advice and training relating to the prevention and settlement of dispute; offer to mediate a dispute that has not been referred to it; conduct or scrutinize any election or ballot of registered trade union or employers Association if, requested to do so by the Labour Court or at the request of the union or association concerned.

What constitutes contempt of the commission is defined by the act under section 20 (3). This section the act of contempt of the commission as; failure to obey any directions of the mediator or arbitrator in relation to the above; wilful hindrance of a mediator or arbitrator in performing his or her functions; insulting disparaging proceedings or improperly anticipating a mediators or arbitrators decision; wilful interrupting the mediation or arbitration proceedings or misbehaving in any manner during those proceedings and doing anything in relation to a court of law that would have been contempt of court

2.11 Labour Court/Adjudication
The Labour Institutions Act (2004) section, 51 provide that, subject to the constitution and the labour laws, the Labour Division of the High Court, Labour Court has exclusive jurisdiction over any matter reserved for its decision by the labour laws.

Under Section 94 (ELRA), “the Labour Court shall have exclusive jurisdiction over the application, interpretation and implementation of this Act”. The Labour Court is also vested with jurisdiction to decide appeals from decisions of the Commission for Mediation and Arbitration i.e. Arbitrators awards and decisions. The Court is also empowered to hear and decide on complaints.

Therefore, it is the purpose of this study to make a critical examination of the effectiveness of dispute settlement under these new labour laws and identify the
challenges experienced in dispute resolution processes and verify the extent to which they impact the spirit of harmonious work relations.

2.12 Conceptual Framework

The key variables which were measured in regard to researcher’s study entailed both the independent and dependent variables. The researcher used conceptual model indicated below to explain intensively and extensively the key factors and how they influence effective dispute settlement. The conceptual framework adopted for this study presupposes those factors that influence effective dispute resolution are shown below.

Figure 2.1: The Conceptual Framework

![The Conceptual Framework Diagram]

Source: Researcher’s construct 2014

2.12.1 Relevant Variables and Relationship

The conceptual framework in research refers to a theoretical structure or an outlines that support a study in doing reflections on the problem under investigation. The figure above is the conceptual framework model for the effectiveness of dispute resolution in the commission.

The first factor is (a) accessibility. Arbitration is accessible if the parties have full knowledge of how it works as well as how readily the facilities can be accessed. This includes the knowledge of the procedures and the system in general. Enabling legislation also plays a part in making the system accessible. According to Trudeau
(2002), accessibility further refers to the ease with which disputants can resort to the process without the complication of technical considerations and complex legal paperwork. Arbitration is also not accessible if the costs of resorting to it are prohibitive.

The second factor is (a) speed. The speed with which a system operates in dispensing justice is a paramount feature of justice delivery and a key feature of effectiveness. According to Trudeau (2002), the system of dispute resolution should not be cumbersome. It should allow for expeditious resolution of disputes by not lengthening the dispute resolution process. Justice delayed is justice denied.

The third and last factor is (c) expertise. Expertise means the competency of the principal actors in the arbitration process. The principal actors presiding over the process should be unquestionably competent and experienced in the field in which they operate. They should also be disinterested and neutral parties (Bishop and Reed 1998). Decisions of arbitrators should not end at being merely reasonable; they should further satisfy the requirement of fairness.

The principle of finality to litigation is realized if justice is perceived by the parties to have been administered fairly. The judiciousness of a decision determines whether parties accept it. It therefore goes without saying that the decision to appeal against an award by any of the parties is directly related to their perception of its judiciousness. A decision which is perceived to be unjust and unfair is likely to be appealed against, thereby prolonging the dispute. Therefore, arbitration calls for high levels of competency and expertise on the part of the arbitrator.

Therefore, dispute settlement is said to be effective when the parties to the dispute can be able to access, the commission free from legal technicality (barriers). Moreover, when the dispute is resolved by people with requisite expertise litigants rights are mostly likely to be protected. The other factors which may contribute to the effectiveness of dispute settlement system is the speed of resolution of disputes which can be achieved by observance of timeframe provided for under the law.
2.13 Research Gap

This study was expected to fill gap by indentifying the obstacles and challenges which affect the commission for mediation and Arbitration in effectiveness of dispute Settlement.

The research questions was what are the dispute settlement procedures under the new labour Laws, is dispute settlement procedure under the new labor laws effective and exhaustive and lastly what are the challenges in the dispute settlement in the commission for Mediation and Arbitration.

In this chapter survey of literature revealed that for dispute settlement to be effective there must be the following steps; the Commission to employ enough Mediators and Arbitrators, regular training for the Mediators and Arbitrators, training of public on labour laws though media, Trade Unionists to train their members on dispute settlement procedures.

2.14 Chapter Summary

This chapter reviewed and explored different scholarly ideas on the effectiveness of dispute settlement system, they have identified three processes of dispute resolution system namely mediation/ conciliation arbitration and adjudication. In Tanzania mediation and arbitration conducted in CMA while adjudication is conducted in the Labour Court. The said Authors have also discussed different attributes of an effective dispute settlement system, namely easy of accessibility, availability of professional staffs who can resolve disputes at reasonable speed. The researcher found the opinions of these learned Authors relevant and applicable to CMA’s major functions. However Authors identified some challenges such as dalay in termination of cases ,resources constrains including financial, staffs, inadequate staffs, inadequate awareness of labour laws.

The next chapter will cover methodology used in this research.
CHAPTER THREE
RESEARCH METHODOLOGY

3.1 Introduction
This chapter provides an overview of the methods used to collect and process data. It gives the research design the sample selection methods, size, and data processing.

3.2 Research Design
The study employed mainly qualitative research approach by applying a descriptive survey design, though some data were dealt qualitatively for the purpose of triangulation. Orodho, (2003 as cited by Kombo, and Tromp, 2006) defined descriptive survey design as a method of collecting information by interviewing or administering a questionnaire in a sample of some individuals. It focuses on information about peoples ‘attitudes, opinions, habits, or any of the variety of education or social issues. This study used descriptive survey design as it allowed multiple data sources such as verbal interaction between the interviewer and interviewees and captured participants’ behaviour in different contexts. Interviews were also used to get some information which was so difficult to get by using questionnaires.

Field research was conducted in the Commission for Mediation and Arbitration to some mediators and arbitrators of the Dar es Salaam Zone, trade unionist, advocates, complainants and respondents from various workplaces seeking services from Commission.

3.3 Area of the Study.
The study was conducted at the Commission for Mediation and Arbitration (CMA), Headquarters in Dar es Salaam. The choice of this area of study was influenced by the accessibility of relevant data for the study from both service providers and the general public involved in labour disputes, time factor as well as data verification after collection.

The population of this study comprised ten Mediators and ten Arbitrators of the Commission for Mediation and Arbitration head office, five Advocates, fifteen
Respondents, forty Complainant, five Personal Representatives, and five Trade Unionist, which made up the population size of ninety (90)

3.4 The target population.
Frankel and Wallen, (2000) describe the term population as a large group of people with one or more characteristics in common. Populations’ characteristics are of interest to the researcher and that the researcher can generalize results from the study. Likewise Keya, et.al. (1989) describes the population as consisting of individuals or things or elements that fit a certain specification. The population of this study consisted of the mediators, arbitrators, advocates who represented their clients, employers and employees who brought their claims before the commission, in other words complainants and respondents, respectively, personal representatives and trade unions who represented their clients and members before the commission.

3.5 Sample size and sampling technique
Sampling is defined as the process of obtaining information about an entire population by examining only a part of it, Kothari C. R (2009).
Sampling and selection are principles and procedures used to identify, choose, and gain access to the population from which the researcher would generate data using the chosen methods Mason, (2003; Cohen et al., 2000) Moreover, Cohen et al., contended that the rationale for sampling is to measure the elements (sample) and draw conclusions concerning the population. It was not possible for the researcher to collect relevant data from the whole population. Thus to obtain the suitable sample for the study population sample was arrived through random sampling and purposive sampling techniques. Randomly sampling technique was used to avoid bias and give an equal chance to every member of the selected population to provide relevant answers, where purposive sampling technique was used because it has low costs. The study centred in the Commission for Mediation and Arbitration involved; advocates, employers, employees, trade unions and personal representatives who were the clients of the Commission
Table 3.1: Sample Size distribution

<table>
<thead>
<tr>
<th>Category</th>
<th>Population size</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mediators</td>
<td>13</td>
<td>21.3</td>
</tr>
<tr>
<td>Arbitrators</td>
<td>9</td>
<td>14.8</td>
</tr>
<tr>
<td>Advocates</td>
<td>6</td>
<td>9.8</td>
</tr>
<tr>
<td>Respondents</td>
<td>8</td>
<td>13.1</td>
</tr>
<tr>
<td>Complainants</td>
<td>10</td>
<td>16.4</td>
</tr>
<tr>
<td>Personal Representatives</td>
<td>7</td>
<td>11.5</td>
</tr>
<tr>
<td>Trade unions</td>
<td>8</td>
<td>13.1</td>
</tr>
<tr>
<td>Total</td>
<td>61</td>
<td>100.0</td>
</tr>
</tbody>
</table>

**Source:** Primary data, 2014

### 3.6 Sampling Technique

Sampling technique refers to a process of selecting a number of individuals for the study in such a way that the individuals selected to represent the largest group from which they were selected (Mugendi, 1999). For the purpose of this study, simple random sampling technique and purposive sampling were used to select the sample size from the population size. The random sampling was done by randomly distributed of the questionnaires to the clients who attended cases at CMA. This technique was used for the purpose of getting the representative sample which contained different clients with different cases from different employers and employees also with different representatives. Furthermore mediators and arbitrators were purposely selected from CMA Headquarters because they were knowledgeable and well informed about the required information.

### 3.7 Methods and tools for data collection

Data are facts, figures and other relevant materials past and present serving as a base for study and analysis. Some example of data are, sex, age, social class, marks
obtained by the study of a class in a test on a particular subject, and the type of new read by a newspaper reader (Krishna Swami, 1993). For the purpose of this study data was collected from the mediators; arbitrators; employers; employees; trade unions; employers’ associations and legal experts /advocates.

3.8 Types of data collection.
This study used both primary and secondary data

3.8.1 Secondary data collection
Secondary data are data obtained from literature sources or data collected by other people for some other purposes. This secondary data provide second hand information and include both raw data and published ones (Kamuzora, 2008) Secondary data were collected from various documents found within the work organization and other sources. These include relevant books and laws, pamphlets, journals, Case Management Guides, newspapers, the commission reports, internet websites, research reports and other sources reviews through investigating the effectiveness of dispute settlement under the new labour laws in Tanzania. The data used to verify the findings based on primary data.

3.8.2 Primary data collection
Primary data as opposed to secondary data are those data collected by the researcher for the first time. This involved direct data collection from respondents and semi-structured interviews. Primary data obtained from the Commission for Mediation and Arbitration, the clients such as; employers, employees or complainants and respondents who had their cases filed and heard as well as trade unionists, advocates and personal representatives who defended their clients at CMA. This type of data provided an insight into the understanding of the new labour laws in relation to improvement in industrial relation. The researcher used two methods to collect data during the study.
i) Questionnaire
The questionnaire is a data collection instrument that permits the use of a set of questions to collect data and carry out a social research. Kothari (2003) argued that a questionnaire consists of a number of questions typed in a definite order printed on a form or set of forms. There are two broad categories of questions that were used in questionnaires such as structured or closed ended and unstructured or open ended questions.

The researcher preferred to use questionnaire because it allowed her to collect information and opinions from respondents in relation to the research problem in hand. It allowed a researcher to collect facts from a large number of people while maintaining uniform response.

The researcher found this method useful and the best while dealing with distanced. In order to assess the effectiveness of dispute settlement, the researcher used questionnaires of both structured and unstructured questions where the respondents were requested to choose between already determined answers. But the respondent had also the chance to respond in any way without being limited to determining the answers.

ii) Interview
Saleem (1997) argues that interviewing respondents are considered to be the most important, reliable and often used fact finding technique. Interviews provided the researcher with the opportunity to collect information from respondents face to face. Interviews were found important in this research because of the following reasons;

- It enabled the researcher to get the facts of the study through an in-depth understanding of respondent in relation to the research problem.
- It enabled the researcher to make verification by asking questions in case of vague and unqualified issues. It was easy for the researcher to solicit ideas and opinions from respondents. This method was used to collect data from the CMA managements, and the targeted respondents whose researcher
failed to reach to serve the questionnaires, and to the respondents who in one way or another were not in the position to feel the questionnaires. The researcher made use of structured guiding questions in the interview, but also allowed flexibility of adding questions in case of need. This was made with the purpose of making responses easier for the researcher to make an analysis.

3.8.1 Validity and Reliability of Instruments
The questionnaires were subjected to a validity test. A pilot survey was conducted within CMA by the researcher to pre test the questionnaire. In addition the CMA staff gave their comments on the clarity of questionnaires before being dispatched to the field. To assess the construct validity of the questionnaires, a pilot survey was done to test if it conferred with the existing theory.

3.9 Data Analysis
Magenta and Mugenda (1999) confirm that the main purpose of content analysis is to study existing information in order to determine factors that explain a specific phenomenon. To this extent, therefore, the responses to the questions were interpreted and put into different specific and relevant categories. Being a descriptive research the data were analysed and tabulated using descriptive methods which illustrated the diverse findings of the study. The descriptive methods used involved ; frequencies, percentages and presentations of tables and graphs analysed under SPSS.

3.10 Chapter Summary
The chapter above presented the methodological aspects of the study. It described the methodology used in data collections, and data analysis by conveying such issues as a study area, study population, sample size and sampling technique, methods and tools for data collection, types of data collection and data analysis. The presentation and the analysis of the research findings in the next chapter will reflect the methodology above.
CHAPTER FOUR
DISCUSSION OF FINDINGS

4.1 Introduction
This is the central chapter in this study. It presents the results and a discussion of the study findings. This chapter presents findings from a literature review, primary data from the interview and questionnaires filled by the Mediators and Arbitrators, Advocates, Complainants, the respondents, trade unionist and the personal representatives. The study is guided by the objectives of examining the dispute settlement processes, assessing the effectiveness of dispute settlement under the new labour laws and to identify the challenges facing the Commission for Mediation and Arbitration in the process of resolving labour disputes.

4.2 The rate of the Respondents
In the field the study was prepared to interview the population of 85 for the purpose of generalizing the whole Out of the 85 questionnaires which were administered by the researcher to the respondents, only 61 were completed and returned to the researcher though others were note fully completed. 24 of the questionnaires were either not returned by the respondents or were found to be incomplete upon return and were therefore discarded from the study. This represented a response rate of 71.8%, which was considered satisfactory for subsequent analysis. The response rate is represented together in table 4.1 below.
Table 4.1 The Rate of The Respondents.

<table>
<thead>
<tr>
<th>The respondents rate</th>
<th>Frequency</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Trade Unionists</td>
<td>8</td>
<td>13.1</td>
</tr>
<tr>
<td>Mediators</td>
<td>13</td>
<td>21.3</td>
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<tr>
<td>Arbitrators</td>
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<td>14.8</td>
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</tr>
<tr>
<td>Personal Representatives</td>
<td>7</td>
<td>11.5</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>61</strong></td>
<td><strong>100.0</strong></td>
</tr>
</tbody>
</table>

Source: Field data, (2014)

4.3 Profile of the Respondents

In this study, several numbers of the population were being given the questionnaires and 61 responded as follows, among them men were 37 (60.7%) of the respondents while women were 24 (39.3%) of the respondents. This was due to the fact that men were very free to respond to the questions and they were willing to volunteer their time to ask for the information and clarification. Also this indicated that men were many than women in some of the employment sectors and they were free to fight for their employment rights up to the level of arbitration even to the extent level of revision to the High court rather than women who sometimes despair to fight for their employment rights from their employers and if they referred their disputes to the commission the majority ends up to the level of mediation, rarely few cases were referred to the level of arbitration and further to the High court.

Table 4.2 The profile of the respondents

<table>
<thead>
<tr>
<th>Category</th>
<th>Frequency</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Male</td>
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<td>60.7</td>
</tr>
<tr>
<td>Female</td>
<td>24</td>
<td>39.3</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>61</strong></td>
<td><strong>100.0</strong></td>
</tr>
</tbody>
</table>

Source: Field data, (2014)
From the illustration above generally men struggled to fight their employment rights to all levels rather than women.

4.4 Education Level of the Respondents

The researcher intended to know the level of the education of the respondents so as to assess the awareness of the respondents with knowledge in laws as well as in labour laws since it would have an impact on the effectiveness of the dispute settlement to stakeholders who assess the Commissions’ services as well as to the Commission itself. However the respondents were requested to state their level of education. The responds from the 61 respondents who were interviewed by the researcher were as in Table 4.3 below. 6 (9.8%) of the respondents were diploma holders, 21 (34.4%) of the respondents were degree holders, for the Postgraduate and Masters holders were 11 (18%) in each category and only 1.6% were not willing to share their education level.

This indicates that the majority were educated, that’s why they understand and respond to the questions accordingly. The category of’ others” and the group of ”no response” represented those with secondary education and standard seven. This indicated that the Commission access to both educated and non educated clients.
This good knowledge of the respondents influenced the collection of quality information about the effectiveness of dispute settlement under the new labour laws in Tanzania.

Table 4.3 Respondents’ Education Level

<table>
<thead>
<tr>
<th>Respondents</th>
<th>Frequency</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Diploma</td>
<td>6</td>
<td>9.8</td>
</tr>
<tr>
<td>Degree</td>
<td>21</td>
<td>34.4</td>
</tr>
<tr>
<td>Post Graduate</td>
<td>11</td>
<td>18.0</td>
</tr>
<tr>
<td>Masters</td>
<td>11</td>
<td>18.0</td>
</tr>
<tr>
<td>Others</td>
<td>8</td>
<td>13.1</td>
</tr>
<tr>
<td>No Response</td>
<td>1</td>
<td>1.6</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>61</strong></td>
<td><strong>100.0</strong></td>
</tr>
</tbody>
</table>

Source: Field Data, (2014)

4.5 The Dispute Settlement process Under The New Labour Laws in Tanzania.

The study, aimed at examining the dispute settlement process under the new labour laws in Tanzania. The researcher wants to know if the respondents were aware of the process used to settle disputes in this new machinery. The respondents indicated that they were aware with the process used to settle dispute within the commission for mediation and arbitration Table 4.4 below shows the findings from the respondents.

Table 4.4 Awareness on dispute settlement processes

<table>
<thead>
<tr>
<th>Respondents</th>
<th>Frequency</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>No response</td>
<td>5</td>
<td>8.2</td>
</tr>
<tr>
<td>Yes</td>
<td>43</td>
<td>70.5</td>
</tr>
<tr>
<td>No</td>
<td>18</td>
<td>29.5</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>61</strong></td>
<td><strong>100.0</strong></td>
</tr>
</tbody>
</table>

Source: Field Data (2014)
The researcher was intended to know if the respondents were aware with the dispute settlement process. According to the findings in Table 4.4, 43 (70.5%) of the respondents said that they were aware that the process of dispute settlement under the new labour laws were Mediation, Arbitration and Adjudication. Though 18 (29.5%) said that they were not aware with the process, the study revealed that the majority of the respondent had the knowledge of the existence of the mechanisms and they made use of them.

Table 4.5  Awareness of stages of dispute settlement

<table>
<thead>
<tr>
<th>Respondents</th>
<th>Frequency</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>No response</td>
<td>2</td>
<td>3.3</td>
</tr>
<tr>
<td>Yes</td>
<td>57</td>
<td>93.4</td>
</tr>
<tr>
<td>No</td>
<td>2</td>
<td>3.3</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>61</strong></td>
<td><strong>100.0</strong></td>
</tr>
</tbody>
</table>

Source: Field Data, (2014)

The researcher intended to know whether the respondents were aware with the stages used in settling disputes before the commission. The information obtained as in Table 4.5 above showed that 57 (93.4%) of the respondents were aware of the stages that employed to settle labour dispute in the commission. 2 (3.3%) of the respondents replied that they were not aware with the stages while another 2 (3.3%) were silent. The findings indicated that the majority of the respondents were aware with the stages.

The majority of the respondents said in the interview that their disputes were in the arbitration stage. They portrayed that many disputes end at the mediation stage within a short period of time as compared to the Repealed labour laws which took too much time to resolve a dispute. The respondents showed positive attitude with the machinery.
Part VIII of The Employment and Labour Relations Act, (ELRA) (Section 86, 95) is dedicated to the labour dispute resolution. It establishes the processes in dispute resolution steps; mediation followed by arbitration and ends up with adjudication. Mediation and arbitration are conducted by the Commission for Mediation and Arbitration (CMA) while adjudication is conducted by the Labour Division of the High Court.

The researcher was interested to know whether the respondents were aware with the time limit for mediation stages as well as arbitration stages. In the field 52 (85.2%) of the respondents responded that the time limit for mediation is 30 days after the dispute reach to the mediator while 9. (14.8%) responded that they were not aware. Also 46 (75.4%) responded that arbitration should be finished within 30 days after the closure of the last submissions while 7 (11.5%) were not aware with the time limit and 8 (13.1%) were silent. This was also the position of law section 86 (4) of ELRA which requires Mediation to be settled within 30 days of reference to the commission and arbitration to be determined within 30 days after the closure of the proceedings.

**Table 4.6 Awareness on time limit for mediation process**

<table>
<thead>
<tr>
<th>Respondents</th>
<th>Frequency</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Not aware</td>
<td>9</td>
<td>14.8</td>
</tr>
<tr>
<td>Awareness</td>
<td>52</td>
<td>85.2</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>61</strong></td>
<td><strong>100</strong></td>
</tr>
</tbody>
</table>

**Source:** Field Data, (2014)
Table 4.7: The Awareness on time limit for Arbitration process

<table>
<thead>
<tr>
<th>Response</th>
<th>Frequency</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>No response</td>
<td>8</td>
<td>13.1</td>
</tr>
<tr>
<td>Awareness</td>
<td>46</td>
<td>75.4</td>
</tr>
<tr>
<td>No awareness</td>
<td>7</td>
<td>11.5</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>61</strong></td>
<td><strong>100.0</strong></td>
</tr>
</tbody>
</table>

*Source: Field Data, (2014)*

4.6 The Awareness of the Respondents on the Existence of the New Labour Laws, Acts No. 6/7 of 2004

The researcher wanted to know if the respondents have the knowledge about the existence of the New Labour Laws in Tanzania. The responses from Table 4.8 indicated that twenty eight (45.9%) of the respondents have sufficient knowledge of the existence of the New labour law document. While thirty of the respondents (49%) of them had “insufficient” knowledge of the existence of the document, however 3 respondents (4.9%) were not aware of the existence of the document at all. Respondents who were not aware of the existence of the Labour Act, 2004 explained that it was due to the scarcity of the printed document in the system. Some, however, acknowledged seeing copies of the document, though failed to have it. This is the reflection of the fact that Tanzanians normally do not like to learn or to read documents.

Through the use of the questionnaire, it was discovered that thirty eight percent (38%) of the respondents had not read the Labour Act, 2004. Twenty others (40%) indicated that they had done insufficient reading of the document. One respondent (2%) had done sufficient reading of the document. It was, however, realized that forty four (54% of the 61 respondents) had heard about position of the document through various media. Forty eight percent (48%) had no enough idea of the existing legal document, while ten (16%) of the respondents had “sufficient” hearing about the document. Out of the 61 respondents, six (11%) of them had not heard about the Labour Act, 2004.
There was a widely held view among the respondents that they had not heard much about the labour document because, they have been little effort to inform people about it by the various mandated bodies through the available means.

Table 4.8 The Respondents’ Awareness of the Labour Law Acts, 2004

<table>
<thead>
<tr>
<th>Respondents</th>
<th>Frequency</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Not at All</td>
<td>3</td>
<td>4.92</td>
</tr>
<tr>
<td>Insufficient</td>
<td>30</td>
<td>49.18</td>
</tr>
<tr>
<td>Sufficient</td>
<td>28</td>
<td>45.90</td>
</tr>
<tr>
<td>Total</td>
<td>61</td>
<td>100</td>
</tr>
</tbody>
</table>

*Source: Primary Data, 2014.*

4.7 The respondents’ Rate of Speed in Handling Disputes in Mediation

The researcher was interested to assess the rate of speed in resolving disputes through mediation stage before the commission. Table 4.9 below indicates that 16 (26.2%) of the respondent said that the speed of settling disputes in mediation stage was very high, 15 (24.6%) said the speed was high, 13 (21.3%) said was medium, 7 (11.5%) said was very low and 5 (8.2%) said was low.

Further more on the part of arbitration Table 4.10 below shows that 24 (39.3%) said that the speed in determining the dispute in arbitration was medium, 12 (19.7%) said speed was high, 8 (13.1%) said the speed was low, and 4 (6.6%) remained silent. In fact the results showed that the speed in resolving disputes in arbitration is medium while in mediation was very high.
Table 4.9: The rate of speed in mediation

<table>
<thead>
<tr>
<th>Respondents</th>
<th>Frequency</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>No response</td>
<td>5</td>
<td>8.2</td>
</tr>
<tr>
<td>Very high</td>
<td>16</td>
<td>26.2</td>
</tr>
<tr>
<td>High</td>
<td>15</td>
<td>24.6</td>
</tr>
<tr>
<td>Medium</td>
<td>13</td>
<td>21.3</td>
</tr>
<tr>
<td>Low</td>
<td>5</td>
<td>8.2</td>
</tr>
<tr>
<td>Very low</td>
<td>7</td>
<td>11.5</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>61</strong></td>
<td><strong>100.0</strong></td>
</tr>
</tbody>
</table>

Source: Field Data, (2014)

Table 4.10: The rate of speed in determining disputes in arbitration

<table>
<thead>
<tr>
<th>Respondент</th>
<th>Frequency</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>No response</td>
<td>4</td>
<td>6.6</td>
</tr>
<tr>
<td>Very high</td>
<td>6</td>
<td>9.8</td>
</tr>
<tr>
<td>High</td>
<td>12</td>
<td>19.7</td>
</tr>
<tr>
<td>Medium</td>
<td>24</td>
<td>39.3</td>
</tr>
<tr>
<td>Low</td>
<td>8</td>
<td>13.1</td>
</tr>
<tr>
<td>Very low</td>
<td>7</td>
<td>11.5</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>61</strong></td>
<td><strong>100</strong></td>
</tr>
</tbody>
</table>

Source: Field Data, (2014)

The researcher found that both employers and employees were satisfied with the time it takes to conclude cases. This was a significant finding because in the Labour Act No. 6, there are no time prescriptions on arbitration cases. However, although the concluding times were given thumbs up by the respondents, in the majority of cases, arbitration did not bring finality to the disputes. It can be inferred from these findings that speed only could not necessarily render a process effectively.

However, the above notwithstanding, some scholars such as Trudeau (2002) argue that speed is a positive factor in the resolution of disputes. This study, however,
argued that the speed in process without resolution of the underlying dispute was meaningless. The concluding of arbitration cases could only be a positive development if the outcomes brought finality to the underlying dispute. Arbitration processes were expeditious, they might run the risk of being useless motions which did not yield the result that they were intended to yield. Speed had to be accompanied by substantive relevance of the process for it to be a positive indicator of effectiveness.

4.8 The Effectiveness of Dispute Settlement under the New Labour Laws in Tanzania

This objective intended to investigate the effectiveness of the dispute settlement under the new labour laws. The researcher was interested to know the number of disputes reported to the Commission for the five years of its establishment. According to the statistics as Table 4.11 below shows, there were 43,000 disputes reported at the commission. Additionally, more than half of the reported disputes were settled in mediation stage.

Table 4.11 Total disputes Received by CMA Since 2008-2012

<table>
<thead>
<tr>
<th>Year</th>
<th>Disputes received</th>
<th>Mediated</th>
<th>Arbitrated</th>
<th>Carried forward</th>
</tr>
</thead>
<tbody>
<tr>
<td>2006/2007</td>
<td>1977</td>
<td>685</td>
<td>240</td>
<td>1052</td>
</tr>
<tr>
<td>2007/2008</td>
<td>6065</td>
<td>4171</td>
<td>1043</td>
<td>851</td>
</tr>
<tr>
<td>2008/2009</td>
<td>6489</td>
<td>5218</td>
<td>773</td>
<td>498</td>
</tr>
<tr>
<td>2009/2010</td>
<td>12573</td>
<td>4373</td>
<td>2364</td>
<td>5836</td>
</tr>
<tr>
<td>2010/2011</td>
<td>8177</td>
<td>4132</td>
<td>2772</td>
<td>1273</td>
</tr>
<tr>
<td>2011/2012</td>
<td>7722</td>
<td>3281</td>
<td>2073</td>
<td>2368</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>43,003</strong></td>
<td><strong>21,860</strong></td>
<td><strong>9265</strong></td>
<td><strong>11,878</strong></td>
</tr>
</tbody>
</table>

Source: secondary data, 2014
Table 4.11 above indicates total disputes referred and received by CMA for the five year period of its existence. The respondents were asked to provide reasons, from their perspectives, for the high referral rate. The reasons were mentioned by them was divided into five categories;

The first category dealt with the ease of access to the CMA. It was mentioned that the CMA was very accessible, that there were no costs involved in registering a case to the CMA, there were no consequences for referring a frivolous dispute, and that union referred all cases and did not make a distinction between cases with merit and those without. This was in line with the CMA’s findings that there was less emphasis on dispute prevention in the past because the primary focus was on dispute resolution.

The second category involved the high expectations of applicants, specifically their perception that one would always get some kind of compensation irrespective of the merits of the case. Some commissioners compared these perceptions of applicants to viewing the CMA as ‘a one arm bandit’, ‘lottery’ where one has to press the right buttons and money will be thrown at them.

The third category referred to the fact that applicants did not have knowledge of the system or their rights and obligations, and were poorly advised by trade unions, labour consultants and the Labour lawyers, who led them to believe that they had a good case and that they should pursue the matter further to the CMA.

The fourth category encapsulated reasons pertaining to the poor economic climate, the high unemployment rate and poverty. It was argued that employees struggle to find employment and refer their case to the CMA in the hope that they might be some kind of financial compensation forthcoming even if it was so-called ‘nuisance money’ that the employer was prepared to pay just to get rid of the dispute.
The fifth category dealt with employers’ lack of knowledge of labour legislation, a disregard for substantive and procedural requirements for fairness and the fact that it was easy to fire workers. It was also mentioned that employers were ignorant of their responsibilities, and that they did not have, or did not use internal grievance and disciplinary procedures to settle.

The high referral rate could be viewed as an indication of pathology of conflict in the labour relationship, which could be the result of a very paternalistic approach to human resources in the workplace.

Table 4.12 The Respondents perception on Effectiveness of dispute settlement

<table>
<thead>
<tr>
<th>Respondents</th>
<th>Frequency</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>No response</td>
<td>14</td>
<td>23.0</td>
</tr>
<tr>
<td>Yes</td>
<td>38</td>
<td>62.2</td>
</tr>
<tr>
<td>No</td>
<td>9</td>
<td>14.8</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>61</strong></td>
<td><strong>100.0</strong></td>
</tr>
</tbody>
</table>

*Source: Field Data, (2014)*

The researcher intended to get the opinions of the respondents on whether the dispute settlement under the new labour laws was effective and exhaustive. According to table 9.12 above, 38 (62.3%) of the respondent said that dispute settlement under the new labour laws were effective, 9 (14.8%) of the respondents said it was not effective, while 14 (23%) of the respondents were silent which means did not respond to the question. The particular question required the opinions of the respondents following their answers. Their opinions were arranged into two categories.

The first category was the opinions of the respondents who said the dispute settlement under the new labour laws was not effective. Their reason was that, many Arbitrators and Mediators were not good in law, the awareness of the process to various stakeholders was also still very low, shortage of manpower led delay into dispute settlement to be concluded in time, hence justice delay is justice
denied, it took long time to complete the process in ending disputes, most cases were not settled because no laws were applied in mediation, parties were not aware with the procedures to be followed, Mediators and Arbitrators were not motivated. Others said that settlement was highly caring for employees but not employers,

The second category said that dispute settlement under the new labour laws were effective because parties were getting their rights as once the dispute referred at the CMA the disputes were being resolved fairly in mediation according to the law and once the parties were not satisfied the dispute can be referred to the arbitration and the arbitrator could decide to combine the procedure mediation/arbitration for the parties to reach agreement. Other respondents said that laws were protecting fraudulent employers, but others said that because the settlement was being done according to law, the settlement was regarded as being about justice.

Moreover, disputes used to be settled within a short time, the procedures were simple and not much technicalities employed or entertained and most complainants usually succeed. Also the procedure complies with time, required by Employment and Labour Relation Act of 2004. The researcher emphasizes that Mediation minimizes number of cases which previously were compiled in the courts, instead of being filed to the proper machinery so as to be resolved on time compared to repealed previous laws. Labour laws are elaborated and explain how the employer and employee would enjoy the rights at the workplace. Cases are solved with much efficiency and in time and most cases end at mediation within 30 days from date. Parties reach an amicable settlement and also award involves a proper procedure. The law is very clear in regards to dispute handling in mediation or arbitration.

According to the findings above the majority accepted that the dispute settlement under the new labour laws were effective, though the minority said that it was not effective.
Challenges Facing Mediators and Arbitrators

Mediators and Arbitrators are facing some challenges in the dispute resolution process. The researcher wanted to examine those challenges. The respondents were asked to identify some challenges faced mediators and arbitrators in the commission. The findings presented in Table 4.13 below indicates that 44 (72.1%) of the Respondents said that there were challenge facing Mediators and Arbitrators, 4 (6.6%) of the respondents said that they have no challenges while 13 (21.3%) of the Respondents were silent.

The researcher asked the mediators and arbitrators whether they attended some training concerning their job. Some respondents replied that they have attended training once for one week for the period of their employment, so they needed some further training. However the respondents revealed the challenges facing mediation and arbitration process as rated the size of their offices; uncomfortable, and inadequate. In addition to the above the respondents reported the challenges facing mediation process as; rigidity of the parties to settle, poor understanding of
the labour law to the parties and advocates who hinders the process, procedures were not known by the parties, adjournment of the process and advocates mix the process with adjudication. They further observed that the new labour laws were not well understood by parties, employers did not hire skilled human resource personnel, trade unions did not discharge their roles effectively, the advocates used too much legal technicalities and employers employed personnel who had inadequate knowledge about labour matters. For the disputes that had taken more than 3 years it was observed that adjournment and postponements by advocates was leading the challenge.

It was found out that; the mediators were very few to mediate the scheduled disputes per day, the room for mediation & arbitration were not conducive, the Mediators & Arbitrators did not observe the ethics of public servants and some disputes took more than 3 months in mediation stage. Furthermore the conflicting judgments, awards at the Commission for Mediation and Arbitration and the Labour Division of the High Court, sometimes worsen the industrial relations at work place. Researchers found that; it is very important that consistency prevail in interpreting the law by the court for the two organs of the dispute settlement mechanisms.

Table 4.13 Challenges facing mediators and arbitrators.

<table>
<thead>
<tr>
<th>Respondent</th>
<th>Frequency</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>No response</td>
<td>13</td>
<td>21.3</td>
</tr>
<tr>
<td>Have challenges</td>
<td>44</td>
<td>72.1</td>
</tr>
<tr>
<td>No challenge</td>
<td>4</td>
<td>6.6</td>
</tr>
<tr>
<td>Total</td>
<td>61</td>
<td>100.0</td>
</tr>
</tbody>
</table>

Source: Field Data,(2014)
4.10 The Respondents’ Obstacles in Dispute Settlement Process

The researcher intended to get the opinions of the respondents concerning the obstacles for dispute settlement. The results below show the rating of the respondents’ identified factors which were obstacle to dispute settlement. The respondents indicated that the big obstacles were low level of understanding of laws by parties in a dispute, poor understanding of procedures by employers and employees, reluctance of parties in a dispute to settle in mediation, condonation, late submission of documents by parties, and availability of working tools such as computers, meeting rooms for mediation, power, motivation to mediators and arbitrators and the like.

The findings indicated that, more than half of the respondents reporting that 59% of the issues were big obstacles, 25.5% of the respondents reported that were not big obstacle and 15.5% of the respondents were silent.

The researcher was intended to get the attitudes of the respondents on whether there is sufficient resource such as availability of power throughout. The respondents replied the power was erratic. The researcher, viewed this as a critical and that sometimes impaired the performance of Mediators and Arbitrators and recommend the situation to be improved through reliable generator.

4.11 The identified Challenges to dispute resolution

The Respondents were required to mention the challenges that face mediators and arbitrators in Dispute settlement Table 4.14 below show some of the challenges identified by the majority. 20 (32.79%) of the respondent showed that the biggest challenges of dispute settlement were the shortage of mediators and arbitrators. This shortage resulted in delayed cases in the commission. 12 (19.672%) of the respondents said that the involvement of advocate in the dispute settlement at mediation stage was also a big challenge because they sometimes mix the technicalities to the procedure which results to the delaying in settlement of the disputes before the commission. 8 (12.12%) of the respondents pointed out the major challenge was the delayed of cases due to few number of Mediators and
7 (11.48%) of the respondents showed that Mediators and Arbitrators are in a lack of incentives. They had no any kind of motivations to buy their moral and capacity in working with the justice awards. 4 (6.56%) of the respondents indicates that other challenges were lack of resources in the C. The others 2 (3.28%) of the respondents showed that the challenge in dispute settlement before the commission was untrustiness. They said that there were some Mediators and Arbitrators who entertain untrustiness to deny justice.

Table 4.12 The challenges identified by the Respondents

<table>
<thead>
<tr>
<th>Challenges</th>
<th>Frequency</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Delay of cases in arbitration</td>
<td>8</td>
<td>13.12</td>
</tr>
<tr>
<td>Inadequate mediators and arbitrators</td>
<td>20</td>
<td>32.79</td>
</tr>
<tr>
<td>Involvement of advocates in mediation</td>
<td>12</td>
<td>19.67</td>
</tr>
<tr>
<td>Untrustiness</td>
<td>2</td>
<td>3.28</td>
</tr>
<tr>
<td>Lack of training</td>
<td>8</td>
<td>12.12</td>
</tr>
<tr>
<td>Lack of resources</td>
<td>4</td>
<td>6.56</td>
</tr>
<tr>
<td>Lack of incentives to mediators and arbitrators</td>
<td>7</td>
<td>11.48</td>
</tr>
<tr>
<td>Total</td>
<td>100</td>
<td>100</td>
</tr>
</tbody>
</table>

Source: Field Data, 2014
Figure 4.2 The Challenges Identified by the Respondents

Source: Field Data, (2014)

4.12 Summary Chapter

This chapter analysed and discussed the research findings from the field. It was guided by the research questions. The findings revealed that people were aware with the dispute settlement system but they had insufficient knowledge on the existence of the Labour Laws document. Furthermore the chapter revealed the perception of the clients concerning the effectiveness of the dispute settlement in, the response was positive due to the reasons that, it was easy to access CMA were many disputes were accomplished in mediation stage and within a short period of time framework, when mediation failed, they have the opportunity of referring the dispute to arbitration and there were no costs in referring disputes in CMA even if it was in a frivolous manner. However the chapter identified several challenges facing the commission in the course of settling disputes such as unavailability of resources such as working tools and fewest number of mediators and arbitrators. Reluctance of the parties in settling disputes at mediation stage, and delay in settling cases. The next Chapter Five will present the Summary, Conclusion and the Recommendations.
CHAPTER FIVE
SUMMARY, CONCLUSION AND RECOMMENDATION

5.1 Introduction
This chapter presents the summary, conclusion and the recommendations from the research findings which were in light of each objective of the study on the Effectiveness of dispute settlement under the new labour laws in Tanzania at the Commission for Mediation and Arbitration basing specifically to the Mediators and Arbitrators, the CMA stakeholders including Advocates Employers’, Employees, Trade Unionists, and Personal Representatives who mostly appeared at the Commission for Mediation and Arbitration of the United Republic of Tanzania.

5.2 Summary of the Research Findings
5.2.1 The dispute settlement Process under the New Labour Laws in Tanzania.
The Parliament of the United Republic of Tanzania in 2004 enacted two Labour Laws; Employment and Labour Relation Act No. 6 of 2004 and Labour Institution Act No.7 of 2004 in order to regulate Labour Relations. The laws adopted Alternative Dispute Resolution; Mediation, Arbitration and Adjudication process which showed important achievements in dispute resolution. These laws came into force in 2006 and completely replaced the repealed labour laws which were seen to be less effective in maintaining the employer employee relationship. The Employment and Labour Relations Act provide for rights and obligations to the employer and employee, while the Labour Institution Act established the labour dispute resolution machineries in two categories; the Commission for Mediation and Arbitration and Labour Court. The dispute settlement process are Mediation, Arbitration and Adjudication. Mediation and Arbitration are mandatorily conducted in CMA while Adjudication conducted by the Labour Court. Again the findings revealed that there was insufficient awareness of the existence of those Labour Laws documents to the public, but the majority of the respondents were aware of the dispute settlement process and its stages.
5.2.2 The Effectiveness of Dispute Settlement under the New Labour Laws in Tanzania.

The effectiveness of dispute settlement in this study was examined by using the following variables; accessibility, speed, expertise and qualifications.

Access to CMA The accessibility is easy. This indicates that it has been easy for the people to apply for the services of CMA. There are no formal pleadings when applying for the dispute to be resolved under the commission. This has ensured that literacy and lack of skills and resources is not an entry barrier to the system.

Speed of CMA in settling disputes is high. The findings revealed that CMA managed to acquire the very high speed required by law in dispute settlement in mediation and medium speed in resolving disputes by arbitration stage. However, in general view the commission has managed to resolve many disputes at a very high speed rate when compared to the speed at which disputes used to be resolved under district courts and to the Industrial Court of Tanzania. The vivid example is the CMA reports which showed that in the year 2008, the disputes received by the commission were 6065 in which 4171 disputes were settled in mediation stage while 1043 were resolved at arbitration stage and the remaining 851 was pending as according to the annual report of the same year.

Furthermore, it was reported that, the disputes received for the five years of the establishment of the CMA, 2006/2007-2012 were 43,003 of which 21,860 disputes were settled in mediation stage while 9265 disputes were resolved in arbitration and the remaining 11,878 disputes was pending as according to the annual report of 2012. The process made it possible and affordable on the application and dispute settlements was acceptable because employees obtained their rights which they were claiming from their respective employers for a short period of time and with no costs as compared to the repealed laws.

5.2.3 The Challenges facing Mediators and Arbitrators in the Commission.

There are Challenges facing Mediators and Arbitrators in the commission, such as the rigidity of the parties to settle their disputes, poor understanding of the law by the parties, procedures are not known by the parties, adjournment of the process by the parties, advocates mix the process with adjudication, employers do not hire
skilled human resources personnel on labour matters, trade unions do not discharge their roles effectively, advocates employ too much legal technicalities. Some mediators and arbitrators do not observe professional ethics. Other challenges are the delay of cases in arbitration, lack of training to mediators and arbitrators corruption, lack of resources and lack of incentives to mediators and arbitrators. Insufficient fund for the commission to employ enough mediators and arbitrators and lack of working tools such as computer library, Furthermore the conflicting judgement awards of the same organs on the same issues always refuel the existing organs of the commission for mediation and arbitration and the labour division of the High Court as a result worsening the industrial relations at work place. It is very important that constant prevail in interpreting law by the court for the two organs of dispute settlement.

5.3 Conclusions
This research study aimed at examining, ‘The Effectiveness of Dispute settlement under the new Labour Laws in Tanzania; using a case study of the Commission for Mediation and Arbitration (CMA) in Dar Es Salaam. The Employment and Labour Relations Act no. 6, of 2004 and The Labour Institutions Act no. 7 of 2004 has set a number of standards that comply with the International Labour Organization’s (ILO) and the current requirement of encouraging investors both foreign and local. The Act has established tie two institutions for resolving labour disputes in Tanzania. These institutions are The High Court, Labour division and The Commission for Mediation and Arbitration (CMA). In addition to establishing the Labour institutions, the Act No.7/2004 narrates the procedures on how the dispute should be processed in the commission. Perhaps what is worth noting here is that the provision of ELRA section 87(1) and (2) does not state, rigid time frame for which parties to disputes should mandatorily resolve the dispute instead it provides room for parties to postpone the dispute as long as they may wish. Mediation is a key aspect in dispute resolution. It is a healthy approach because once the dispute has been completed through mediation, both parties leave the
mediation room as friends for the agreement has reached on a win – win relationship. The ELRA sets clear and unambiguous procedures on how this should carry out. Section 86(4) of the ELRA 2004, states that; the mediator shall resolve the dispute within thirty days of the referral. The parties who have their decision arrived by this method will have their disputes settled once and for all and parties can in no way revive the dispute so resolved and the parties will have time to concentrate on their issues. Resolution reached by mediation has immense benefits to both parties to the dispute. Each party to the dispute will know definitely how he/she will get and the loose once dispute has been settled as settlement reached through mediation are binding unless either of the parties can construe misrepresentation during the time of mediation.

The researcher also sees that at the extreme end there is also a possibility that the dispute may not be resolved at the mediation stage. In this case the matter will be referred to arbitration. At this level the legal process starts to take its position. Even at this stage, however, the law provides for room to mediate should parties so decide. This study also shows, despite the fact many disputes are resolved at mediation stage, those referred for arbitration take long to finish. Section 88 (4) of ELRA and section 88 (5) narrates the procedures to be followed at the CMA when the dispute is referred to for arbitration. It has been contended that those disputes which did finish has occasioned by delay by both parties in dispute.

In addition to what has been above it has argued that the CMA is also affected by want of resource that facilitate dispute resolution. At some point in this study the question of power failure is reported to be critical. These plus other factors have, to a greater extent affected the performance of the CMA. In the pool of these shortcomings, it is noted on the hand that mediators and arbitrators and some clients are well educated academically and professionally. While it can be presumed that, these well qualified stakeholders will speed up the process of dispute resolution at the CMA, it is reported in this study that they are causing delay by adjourning disputes and applying legal technicalities, which the law on ELRA and LIA precludes.
In the pool of these ups and downs of work environment at the CMA this study has shown good performance compared to the former labour laws which have been repealed by enactment ELRA and LIA unlike the former, the latter has improved greater margin the dispute resolution processes at the CMA. In view of what has been uncovered in this study, the researcher of this dissertation concludes that the ELRA and LIA will reduce substantially trade dispute subject to putting in place opinions and comments of various stakeholders.

5.4 Recommendation

5.4.1 The dispute settlement process in Tanzania

It was discovered that the public had no sufficient knowledge of labour laws. The labour dispute settlement system involves tripartite stakeholders which are employers, employees and the government. For the effective settlement, the general training for the stakeholders is of more importance. Therefore the researcher recommends the commission to provide the training through the media and if possible to conduct joint seminars in order to create awareness for the stakeholders.

5.4.2 The Effectiveness of Dispute settlement in CMA

For an effective and efficient discharge of the duties, it is recommended that the organs need to work together with other institutions. For example, the Labour Administration and Inspection Services to ensure an effective program which will definitely prevent more trade disputes and enhance good industrial relations and therefore reducing a great extent the workload of the institutions for the dispute resolution

5.4.3 The challenges facing mediators and arbitrators in settling disputes ii)

(i) The government be advised to provide enough budget to the commission for the purpose of employing more mediators and arbitrators

(ii) It is recommended that, for the practitioners of the Disputes Settlement Mechanisms should be trained so as to be conversant of the systems. The society is dynamic, so the law cannot be static. It has to be dynamic also hence a need for these practitioners to refresh their minds on what is transpiring in the legal field by
reading relevant case laws, law journals, also sharing information, knowledge and experience with other practitioners in other countries with similar system on dispute settlement mechanisms. This is very important for mediators and arbitrators because the participation at the hearing of the matters of the advocates, attorneys, and legal experts is more common, hence they are changing the dynamic of hearing and are raising new issues dramatically. And thus complainant is no longer a person with no legal knowledge, desperately fighting a defensive action. Again mediators and arbitrators need regular training on different aspects concerning mediation and arbitration procedures as compared to their life at work place, the life of their clients, the economic situation of their nation, ethics at work places, harmonization of the situation as well as creating a harmonious situation at work place.

(iii) Arbitrators as well as Mediators are doing a very crucial job of creating a harmonious situation at work place. They use a lot of extra hours in writing awards. Their work is clearly seen not only by the nation, but also in the world. The most vivid examples are the visitors from other countries who also doing the same mechanism coming to seek advice from the commission. Their impartiality in dispute resolution creates peace and harmony at work place and to the whole nation as to promote peacefully economic activities for the local and foreign investors in the country. Therefore, it is the researchers’ recommendations that arbitrators be paid motivation for their good job, particularly paid extra duty allowances for the consideration of the hard job of writing awards in order to maintain their professional ethics as well as issuing justice awards and on time. Furthermore the commission need to provide sufficient working tools to the mediators and arbitrators such as rooms which are conducive for mediation with sufficient power, computers, and the like.

(iv) There is the need to improve the information technology for instance the CMA in which there is no website, hence hindering the dissemination of information on the operation of the commission. The commissions should educate the public and provide necessary information about its functions.
5.5 Limitation of the Study

In the course of undertaking the study, the researcher encountered the following limitations:

Some respondents were reluctant to provide information with regard to the study while others provided inaccurate information. The researcher edited it in order to avoid the effect to the findings and conclusions.

There were few researches which had been done in Tanzanian particularly on Disputes Settlement Mechanisms, its applicability and administration under the New Labour Laws which made it difficult for the researcher to acquire a guiding framework for other researchers.

Also ethical consideration was observed during data collection whereby the researcher, guaranteed the respondents that, the information collected would be confidential and that it would be used for the academic purpose only and not otherwise. This helped to establish good mutual relationship with respondents.

5.6 Suggestion Further Research

This research just looked at the extent to which the Disputes Settlement Mechanisms are administered in order to achieve the standards set by the International Labour Organization. Other researchers may carry out studies on the institutions such as specifically in essential Services Committee e.g., healthy, that dealing with labour matters institutions that dealing with the labour matters. Generally, a lot of research is yet to be done on the challenges which face Disputes Settlement Mechanism in Tanzania.
REFERENCES

ACAS (2005) ”Evaluation of the ACAS Pilot of Mediation, Appeals and Employment Law


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APPENDIX

Questionnaire to Mediators, Arbitrators, Advocates, Employers, Employees and Trade Union

Introductory Remark

I am a student pursuing Masters in Public Administration at Mzumbe University. This questionnaire is designed to obtain information on the research topic: The Effectiveness of Dispute Settlement under new Labour Laws in Tanzania; using a case study of CMA in Dar es Salaam. Dear participants you are kindly requested to respond to the questions assured that the information sought will be used purely for academic purposes hence high degree of confidentiality will be observed.

Part one  Please tick

Personal Information

Sex  (a) Female  {}
     (b) Male   

2. Level of Education
   Diploma
   Degree
   Postgraduate level
   Masters level
   Others

3. What is your professional training
   Lawyer by training
   Postgraduate in law, Mediation & Arbitration
   Industrial Relation Training
   Sociology and related subjects

4. What is your professional/status in dispute settlement? Please tick
   Mediator
   Arbitrator
   Advocate
   Complainant
   Respondent
PART TWO

5. (a) Are you aware of the dispute settlement process under the new labour laws?
   Yes { }  
   No { }  

(b) If the answer is yes please list them
   a) ................................
   b) ................................
   c) ................................

6. The process of dispute settlement under the new Labour Laws are Mediation, Arbitration and Adjudication.  
   Do you agree?
   Yes { }  
   No { }  

7. a) There are two stages to resolve disputes in the commission for Mediation and Arbitration.
   Do you agree?
   Yes { }  
   No { }  

   b) The dispute under Mediation stage is supposed to end within 30 days after the dispute reach to the mediator
   a) Yes { }  
   b) No { }  

   c) The dispute under the arbitration stage is supposed to be determined within 30 days after Final Submissions.
      a) Yes { }  
      b) No { }  

   d) How are you aware with the labour laws Acts, 2004?
      Sufficient { }  

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8. (a) How do you rate the speed in setting dispute under the Mediation stage?
   1. Very high  {  }
   2. High       {  }
   3. Medium     {  }
   4. Low        {  }
   5. Very low   {  }

   b) How do you rate the speed in setting dispute under the arbitration stage
   1. Very high  {  }
   2. High       {  }
   3. Medium     {  }
   4. Low        {  }
   5. Very low   {  }

   Please can you tell me the number of labour

9. (a) Disputes have been reported at the commission for the first 5 years since its establishment?  
   ................................

   (b) More than half of the dispute received in 2 above was:-
   a) Settled on Mediation stage
   b) Determined by arbitration stage  {  }
   c) Pending in the commission

10. (a) In your opinion, do you think the dispute settlement under the labour law are effective?
    Yes                       {  }
    No                        {  }

    Please,
    elaborate.................................................................
    .................................................................
11. Do you think there are challenges facing Mediators and Arbitrators in setting labour dispute within the commission?
   Yes {  }
   No {  }

12. What are these challenges?
   a) ………………………
   b)………………………
   c)………………………
   d)………………………
   e)………………………

13. To what extend are the following factors obstacles in the dispute settlement process? Please stick the appropriate answer.

<table>
<thead>
<tr>
<th>Factors</th>
<th>Not an obstacle</th>
<th>Big obstacle</th>
</tr>
</thead>
<tbody>
<tr>
<td>Law level of understanding of laws by parties in a dispute</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Poor understanding of procedures</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Reluctances of parties in a dispute to accept Mediation</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Condo nation</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Late submission of documents</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Availability of making tools computers, room for mediation</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

14. (a) Please, do you think the dispute setting process speed, comply with the time frame as required By ELRA?
   Yes {  }
   No {  }

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15. Please, how do you rate the factors that delays in labour dispute settlement before the commission?

<table>
<thead>
<tr>
<th>Factor</th>
<th>Strong</th>
<th>Not strong</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lack of enough Arbitrators &amp; Mediators</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Adjournment / Postponement by advocates</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Adjournment by the parties</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Adjournment by commission own accord</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Characters of own choice in representation</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Thank you for your cooperation