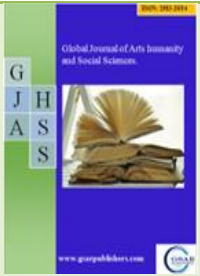
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AN OVERVIEW OF THE LEGAL FRAMEWORK GOVERNING RIGHTS OF ACCUSED PERSON DURING CRIMINAL TRIAL IN TANZANIA

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Abstract

This article explores the legal framework on the legal rights of the accused during criminal trial and it focuses on the laws which provides for procedures and rights together with the institutions involved in criminal trial in Tanzania. The responsibility of the state, its organs and the departments concerning in this stage and the laws in ensuring the rights of accused are adhered at every stage of criminal proceedings are also addressed. Also the article in conclusion shows how the rights of the accused are violated by some of the provisions of the law such as the provisions of right to bail to the accused person in which it requires the certificate in writing from the Director of Public Prosecution, therefore the article concluded by advocating for a concerted effort by stakeholders to prioritize the rights of the accused persons and suggest ways forward to protect accused rights in Tanzania.

Key terms: Accused person, rights of accused person, criminal trial

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INTRODUCTION

The legal basis of the rights of accused during criminal trial are well illustrated under the 1977 Constitution of the United Republic of Tanzania as amended from time to time, the Constitution of United Republic of Tanzania under the Bill of rights from Article 12 to Article 29 underscores the importance of respect for and protection of basic rights and freedom of accused or suspected persons by the state and its law enforcement agencies. There are several rights of accused person in Tanzania which includes: right to be informed on ground of arrest and the offence that he or she is charged with, right to bail for bailable offence, right to legal representation, right to be heard right to be taken to court and right to protection of their dignity¹ the Criminal Procedure Act, provides for the procedures to attain criminal justice and it has some of the

provisions which guarantees the rights to the accused person in conformity with the Constitution, the Economic and Organised Crimes Control Act, deals with the procedures of economic offences and provides for the rights of the accused person in economic cases, the Magistrate Court Act, provides for the procedures in the subordinate courts and also provides some of the rights of accused person, the Prevention and Combating of Corruption Act, which provides for the procedures of corruption cases conducted in the Bureau and some of the rights that accused as to attain, the Evidence Act which provides the means of taking evidence, questioning witnesses and the burden of proof in criminal cases, the National Security Act which provides for the offences concern national security and some rights that accused can attain in such cases, the National Prosecution Services which governs prosecutors and establish the Director of Public Prosecution Office which is responsible in coordination of all criminal cases in Tanzania and the Legal Aid Act which provides for the right to legal representation before the high court to the

¹ Mosha Esther J, (2020), *innocent until proven guilty*, Tanzania Associate LTD, Dar es Salaam.



peoples with insufficient means to hire advocate so as to attain fair trial.

2.1 DESCRIPTION OF KEY TERMS ON RIGHTS OF ACCUSED PERSON IN CRIMINAL TRIAL

Accused Person

This is an individual facing criminal charges, also refers to an individual under criminal prosecution or one of the parties to criminal proceedings.² The status of accused can arise from various stages such as arrest, charges, legal rights, trial and outcomes.

Rights of Accused Person

These are entitlements that an accused person must always have throughout criminal procedures. The accused has several rights, including the right to be prosecuted lawfully in accordance with the code of criminal procedures, the right to be presumed innocent, the right to be heard, the right to information, the right to bail, the right to select defense counsel, the right to implement corrective measures, and other rights protected by the Constitution and other laws.³

Criminal Trial

A criminal trial refers to the legal procedure used to prosecute a person or organization that has been accused of committing crime.⁴ This is the most crucial phase of criminal proceedings where a determination of the defendant guilt and punishment is made. It is also the time when it is vital to locate and gather evidence both prove and disapprove the accused guilt,⁵ it is carried out in presence of all members of judicial panel, a record clerk, prosecutors and defendant and it is concluded by the announcement of a verdict that either finds the accused guilty or exonerate him from charges.⁶ It is very important stage in the criminal justice system as it is the means of making sure that the evidence are all gathered and the accused receives the fair trial and other rights by means of the laws and the institutions that are responsible in criminal proceedings in Tanzania. The proper implementation of the laws by the institution concerning can significantly reduce the infringement of the accused rights at this stage.

2.2 THE LEGAL FRAMEWORK GOVERNING RIGHTS OF ACCUSED PERSON IN CRIMINAL TRIAL IN TANZANIA

² <https://verejnazaloba.cz/en/more-about-public-prosecution> accessed on October 2024

³ <https://liberal-international.org/> accessed on October 2024.

⁴ <https://study.com>academy>ele> accessed on October 2024.

⁵ WILLIAMS Sarah, (2023), *Criminal Trial Overview*, Find Law's team of legal writers and attorney.

⁶ <https://verejnazaloba.cz/en/more-about-public-prosecution> accessed on October 2024.

THE CONSTITUTION OF UNITED REPUBLIC OF TANZANIA, 1977

The Constitution of United Republic of Tanzania being the supreme law of the land provides for the rights and obligations of citizen, rights of the citizen are enshrined in the Constitution under article 12 to 29 which is included in the constitution in 1984 amendment in the name of bill of rights.⁷ These rights are guaranteed by the Constitution to every citizen including accused persons and it is the requirement of the law that is to be protected at any cost by both government and citizens, these rights includes the right to be heard, presumption of innocence, right to freedom of liberty and freedom of movement, right to legal representation, equality before the law together with other rights.

Right to Equality before the law

Article 13 of the Constitution of United Republic of Tanzania⁸ provides for the right to equality before the law that everyone has the right to protection and equality before the law and since everyone is equal before the law no one is above it, it emphasize on the equality before the law and prohibits any form of discrimination. Under Article 13(3) thereof, such right and other civic rights set out in part III of the Constitution are justifiable. To ensure that such right is duly protected, sub-article (6) requires the state authority to put in place procedures which are appropriate or that which observe the following principles. Principle of fair hearing, presumption of innocence, principle of non retrospective of the law, human dignity shall be protected in all human activities pertaining criminal investigation and process in any criminal matter for which person is restrained or in execution of the sentence and principle against torture or inhuman or degrading punishment or treatment this entails that even the Director of Public Prosecution which under the laws of the land is given power which views the Director of Public Prosecution over and above the accused person the certificate written by the Director of Public Prosecution is against equality before the law.

Right to Fair hearing, appeal and other legal remedies

Article 13(6)(a) of the Constitution of United Republic of Tanzania⁹ provides for the right of hearing and the right of appeal, therefore in criminal cases the accused person must be given the opportunity to be heard and this was emphasized by maxim *audi alteram partem* and that no one should be condemned unheard this maxim is inconformity with Article 13(6)(a) of the Constitution of United Republic of Tanzania 1977 and emphasized in the case of *Director of Public Prosecution vs Yassin Hasssan*¹⁰ which provides that the right of party to be heard before adverse action is taken against such party has been stated and emphasized by courts in numerous decisions that right is so basic and decision which arrived at in violation of it will be nullified because the violation of it is considered to be breach of natural justice.

⁷ Cap. 2.

⁸ Cap. 2.

⁹ Cap. 2.

¹⁰ *Criminal Appeal No. 202 of 2019*



The right to legal representation is incorporated under the Constitutional rights that embrace among other things the right to fair hearing, the right to legal Counsel of one's choice and personal freedom respectively,¹¹ Any party in a case has the inalienable right to have legal representation by an advocate or any other individual of their own choice.¹² This was emphasized in case of Alex John vs Republic¹³

Right to presumption of innocence

The right to presumption of innocence, this right is guaranteed under Article 13(6)(b) of the Constitution of United Republic of Tanzania 1977.¹⁴ That no person charged with criminal offence shall be treated as guilty of the offence until proved guilty of that offence, this was shown in the case of Roseline Achachi Lilian Wandera vs the Republic¹⁵ whereby it was provided that an accused person is presumed innocent until proven guilty by the competent court and it is preserved under Article 13(6)(b) of the Constitution of Tanzania 1977.

Right to personal freedom

Right to bail, in which bail is the conditional release of a suspect or accused person from the custody of law enforcement agency or court on the undertaking that he or she will submit himself in the future when needed.¹⁶ It is called conditional release because it has some conditions such as having introduction letter, surrender passport, deposit security in form of title deed, presence of sureties and deposit some money.¹⁷ Bail is a universally acknowledged fundamental human right that guarantees an individual's freedom until they are found guilty in accordance with the law.

In Tanzania, the court interprets the right to bail as the right to personal freedom guaranteed by Article 15(1) and (2), which states that no one may be arrested, imprisoned, confined, or detained unless doing so is permitted by law or the execution of a judgment, order or sentence issued by the court after a legal proceeding, therefore a person has right to freedom and live as free person the right to bail is also rooted under Article 13(6)(b) of the Constitution of United Republic of Tanzania 1977 to presumption of innocence that every person is presumed innocent until proven otherwise as provided in the case of Roseline Achachi Lilian Wandera vs the Republic¹⁸ that bail is the right of every accused

¹¹ Cosmas Raymond M (2023), *Evaluation of the Right to Legal Representation before the Ward Tribunal in Tanzania*, journal of Modern Law and Policy. P. 17.

¹² Everett V.A, *Inalienable rights and the Eight amendment* Colombia Law Review, Vol 20 N. 2 (1920)

¹³ criminal appeal No. 129 of 2006(unreported)

¹⁴ Cap. 2.

¹⁵ Criminal Application No. 107 of 2023.

¹⁶ Peter, Chris, M, (1997), *Human rights in Tanzania: selected cases and Materials*, Rudiger Koppe Verlag: Koln-Germany, p. 527.

¹⁷ Mkami Baraka & Kajiru Ines, (2022) *Bail in mainland Tanzania: an overview of DPP's certificate on denial of bail*.p 28.

¹⁸ Criminal Application No. 107 of 2023.

person charged with bailable offence regardless of status and any refusal must be nailed on and since is the Constitutional right it is not to be granted discriminatorily, therefore is required by the law to live free until the final determination of the criminal proceeding by the court of law. This was emphasized in the case of Director of Public Prosecution vs Daudi Pete¹⁹ where the provision which refuses bail to the accused was viewed as unconstitutional.

In order to protect those rights to the accused the Constitution of United Republic of Tanzania establish the Judiciary under Article 107A for dispensation of justice in the United Republic of Tanzania and in exercising the power of dispensing justice, all courts shall be required only to observe the provision of the Constitution and those of the laws of the land under Article 107B of the Constitution of United Republic of Tanzania 1977. Article 30(3) of the Constitution of United Republic of Tanzania²⁰ provides that any person claiming that any provision of the law concerning his rights and duties being violated by any person anywhere in the United Republic of Tanzania may institute proceedings for redress in the High Court.

THE CRIMINAL PROCEDURE ACT, 1985

The Criminal Procedure Act provides for the arrest and investigation as the pre-trial in criminal cases, arrest and its procedures are provided under section 11 of the Criminal Procedure Act, arrest under Criminal Procedure Act is based on the English common law.²¹

Investigation by the police officer is guaranteed under section 10 of The Criminal Procedure Act. In any case the information must be recorded by the receiver in the manner provided for section 10(3) of the Criminal Procedure Act.²²

The right to fair hearing, freedom of movement and presumption of innocence under the CPA

Part VI of the Criminal procedure Act²³ provides for the trial in subordinate courts and High court. Every court has the authority to cause to be brought before it any person who within the local limits of its jurisdiction and is charged with offence committed within Tanzania and to deal with the accused person according to the law. The law provides for the procedures to be followed to attain justice in criminal trial starts from institution of criminal proceedings under section 128 of the criminal procedure Act²⁴ which guarantees the accused person the right to be informed on the offence that he or she is charged with and the right to be heard, then there is bail which can be court bail after a person is taken to the court, the Criminal Procedure Act of 1985²⁵ provides the right under section 148 and section 148(4) and (5) provides for offences

¹⁹Criminal case No. 80 of 1998.

²⁰ Cap. 2

²¹Massawe, A.A. F, (1980), *The law of Criminal Procedure*, T.M.P. Book Department, Tabora, Tanzania.

²² Cap. 20 [R. E 2022].

²³ Cap. 20 [R. E 2022].

²⁴ Cap. 20 [R. E 2022].

²⁵ Cap. 20 [R.E 2022].



which are not bailable as it was challenged in the case of Director of Public Prosecution vs Daudi Pete²⁶ where by the High court was of the view that the provision of section 148(4) and (5) of the Act which prohibit bail in a certain cases were unconstitutional and are therefore null and void since it violates various articles of the Constitution which concern the basic rights and the doctrine of power between judicature and the legislature. Also it was illustrated in the case of Dickson Paulo Sanga vs Attorney General²⁷. The complaint was that the impugned provision denies bail to a person accused of an offence falling within listed offences and situations under section 148(5) of the Criminal Procedure Act, commonly referred to as "non-bailable. The thrust of the complaint was that the impugned provision violates articles 13(3) & (6)(b) and 15(1) & (2) of the Constitution of United Republic of Tanzania 1977 and it is for such reason unconstitutional, the Constitutional right provided and interpreted by the courts to be right to personal freedom and the right to presumption of innocence.

The right to information is provided by Section 23 of the Criminal Procedure Act, which emphasizes the right of the person to be informed of the reason for their arrest, whether they are arrested by a police officer or a private individual. There are two exceptions to this rule: if the person arrested makes it impracticable for the person arrested to inform him of the offense for which he is arrested, and if the arrested person ought to know the substance of the offense for which he is arrested.

However, the general rule stipulates that the person must be informed of the reason for the arrest and if he is under restraint, police must notify him in his native tongue, both in writing and if possible verbally about the reason for the restraint and the offense for which he is being restrained under section 53 of the Criminal Procedure Act.²⁸

preliminary hearing under section 192 of the criminal hearing to determine the matters not in dispute and the accused here is given the right to be heard in his presence or his advocate if represented plea bargaining under section 194A of the Criminal Procedure Act which is the agreement between parties in criminal trials to reduce the gravity of the crime to the accused person, which guarantees the freedom of choice to an accused person, case for prosecution under section 288, examination of prosecution under section 290 and the close of the prosecution case under section 293 of the Criminal Procedure Act and the defense case is opened under section 294 of the Criminal Procedure Act and close of hearing which is associated with the right to be heard and the legal representation of the accused and delivery of judgment under Part IX of the Criminal Procedure Act which goes to the right to the fair hearing and the right to appeal under the Constitution of United Republic of Tanzania.²⁹ During these stages the accused must be accorded the rights under Section 231 of the Criminal Procedure

²⁶ *Criminal case No. 80 of 1998.*

²⁷ *Civil Cause No 8 of 2019 (unreported).*

²⁸ *Cap. 20 [R. E 2022].*

²⁹ *Cap. 20 [R. E 2022].*

Act on the right to be heard and accorded the opportunity to prepare his defense as emphasized in the case of Ndamashule Ndoshi vs Republic³⁰ An accused person must be informed by the trial magistrate that they have the choice to raise a defense or not in relation to the charge or any other offense for which the court may find them legally guilty. The section is significant because it elaborates the principle audi alteram partem, which states that no one should be condemned without being heard, the right to choose one's own legal counsel, and the right to legal representation under section 310 of the Criminal Procedure Act. In addition to the right to testify in defense, the accused also has the right to call witnesses to testify on their behalf,³¹ which was emphasized in the case of Alex John vs Republic³² which emphasize on the right of accused to prepare his defense and choose the counsel of his own choice.

THE ECONOMIC AND ORGANISED CRIMES CONTROL ACT, 1984

This is the law provide for the procedures of criminal proceedings of economic in nature provided under part IV of the Act specifically section 29 of Economic and Organised Crimes Control Act³³

Right to fair hearing, presumption of innocence and freedom of movement under EOCCA

This outlines the arrest process and mandates that the accused individual be taken to court within 48 hours of the arrest in order to safeguard their right to a hearing. In the event that the accused is not brought to court within the allotted time, the prosecution must explain why, otherwise, it casts doubt on their case.³⁴ To avoid miscarriage of justice in conducting the trials it is very important for the trial court to be diligent and to ensure without fail that the accused person is made aware of his rights at every stage of proceeding in conformity with Article 13(6)(a) of the Constitution of United Republic of Tanzania 1977.

Besides, to ensure that, the suspect is afforded a fair right to be heard in terms of Article 13(6)(a) of the Constitution, sections 29 (2) and (3) of the Economic and Organised Crimes Control Act³⁵ require the district court to which the suspect is produced to fully explain to the suspect the charge he is facing and avail him an opportunity to access legal representation. In the second limb of the complaints the appellant blamed the committal court for violating the provisions of section 29(2) and (3) of the Economic and Organised Crimes Control Act in two ways, namely; failure to avail him with a copy of the charge sheet and an opportunity to access legal representation such that he was unrepresented when he was initially arraigned at the committal court as provided in the case of Freeman Aikaeli Mbowe & Another v Republic High Court

³⁰ *Criminal Appeal No. 120 of 2005*

³¹ *Cap 20 of 1985 [R.E 2022]*

³² *criminal appeal No. 129 of 2006(unreported)*

³³ *Cap. 200 [R.E 2022].*

³⁴ <https://fbattorneys.co.tz/delay-in-taking-accused-to-court/> accessed on October 2024.

³⁵ *Cap 200 of 1984 [R. E 2022]*



of Tanzania at Dar es Salaam.³⁶ Section 30 provides for committal by court it is followed by the institution of information before the court under section 31 of the Economic and Organised Crimes Control Act,³⁷ whereby at this stage the accused person is given his right to be informed on the offence that he or she is charged, preliminary hearing under section 35 of the Economic and Organised Crimes Control Act which provides for the right to be heard and informed another provision is of section 36 of the Economic and Organised Crimes Control Act which provide for bail to the accused person although there is the requirement of the law that Director of Public Prosecution can certify the denial of bail to the accused which is the right to the accused person and it is associated with the right personal freedom and the right to presumption of innocence. During criminal trial the accused person is required to be presumed innocent until proved otherwise the laws governing criminal trials provides for this right in criminal proceedings and this right is rooted under the right to bail in which any accused person is subject to bail for the bailable offence. The Economic and Organised Crime Control Act has given powers to Director of Public prosecution to certify in writing the denial of bail under section 36(2) of the Economic and Organised Crime Control Act³⁸ at this time the right to personal freedom and the right to presumption of innocence particular are tied up by conditions.³⁹ The right to bail ensure that a suspect live with the freedom and with minimal conditions which helps the accused to access the access to criminal justice. The right to bail promotes the right to work and the access to lawyer for the legal representation;⁴⁰ this may have a detrimental effect on the accused person's rights. The criminal justice system is impacted by the Director of Public Prosecution's authority to attest in writing that bail was denied. This authority infringes upon a number of rights, including the rights to equality before the law, liberty, and a fair trial, as well as the separation of powers.⁴¹

Procedures on the close of the prosecution case and the provisions on judgment and sentence under section 41 and 43 of the Economic and Organised Crimes Control Act⁴² is connected to the right to be heard and the right to appeal to the accused person.

THE MAGISTRATE COURT ACT, 1984

The Act provides for the jurisdiction, power and functions of magistrates' courts and for other related matters under the long title

³⁶ *Criminal Appeal No. 344 of 2018 (unreported)*.

³⁷ *Cap. 200 of 1984 [R. E 2022]*.

³⁸ *Cap. 200 of 1984 [R.E 2022]*.

³⁹ *Freeman Aikaeli Mbowe & Another vs Republic, High Court of Tanzania at Dar es Salaam, Criminal Appeal No. 344 of 2018 (Tanzlii) p. 14-15.*

⁴⁰ *Freeman Aikaeli Mbowe & Another vs Republic, High Court of Tanzania at Dar es Salaam, Criminal Appeal No. 344 of 2018 (Tanzlii) p. 14-15.*

⁴¹ *Msekwa, P, (1997), The Report of the Judicial System Review Commission, Dr es Salaam, Tanzania p. 203*

⁴² *Cap. 200 [R. E 2022]*.

of the Act.⁴³ This is the law which governs both criminal and civil proceedings in subordinate Courts.

Right to fair hearing and right to legal representation under MCA

section 34 of the Magistrate Court Act⁴⁴ provides for the right to be heard under that every person is entitled to be present at hearing or their advocates and section 33 as it provides for the right to legal representation is one of the concepts that help ensure a fair trial, although previously the law was not providing for the room of advocates to appear before primary courts to represent parties involved in the legal dispute, whereby prosecutors and advocates were limited from appearing or act for the parties to the proceedings in primary court later on in 2021 the parliament amend section 33 through the Written laws (miscellaneous amendments) (3) Act of 2021⁴⁵ which introduce new subsection (4) to allow each party in primary court to be represented that means prosecutors and advocates are allowed to appear and act for the parties in primary court to court of appeal so that each party can attain fair trial.⁴⁶

Section 54 of the Written laws (Miscellaneous Amendments) (No.3) Act of 2021⁴⁷ amend section 33 by adding (4) notwithstanding the provisions of this section, an advocate may appear or act for any party in primary court presided over by the Resident Magistrates. In the case of *Nelson Elifalet Mmari v Vetynice Jackson Kimambo*⁴⁸ whereby Masabo J believed that the Written Law (Miscellaneous Amendments) (Act No. 5 of 2021), which was passed by the parliament, allowed advocates to appear and have audiences before the primary court presided over by the resident magistrate. This eliminated the need to transfer the case to the District Courts or the Resident Magistrate courts where the parties have the right to legal representation, because it is the only venue where advocates can appear and have audiences outside of the High Court and Court of Appeal. On the other hand, Masabo J contended that even if the transfer was required, the petition should not have been sent to the resident magistrate court because the petition is under the jurisdiction of the district courts of Siha and Hai, which are closer to their residence. Therefore, moving the petition to one of the two district courts would be more practical and suitable.

Access to legal representation during and before the tribunal is well established within the domestic understanding of fair trial; it is necessary to have someone to present another in judicial or quasi-judicial bodies since it provides the principle of natural justice. It is recognized by various human rights instruments as the right to

⁴³ *Cap. 11 [R.E 2019]*

⁴⁴ *Cap. 11 [R.E 2019]*.

⁴⁵ *Act No 5 of 2021.*

⁴⁶ *Cosmas Raymond M (2023), Evaluation of the Right to Legal Representation before the Ward Tribunal in Tanzania, journal of Modern Law and Policy. P.18.*

⁴⁷ *Act No. 5 of 2021.*

⁴⁸ *High Court of Tanzania misc Civil Application No. 5 of 2022.*



instruct legal counsel during the settlement of disputes and it becomes a fundamental right because of the right to be heard.⁴⁹

THE PREVENTION AND COMBATING OF CORRUPTION ACT, 2007

The Act provides for the prevention, investigation and combating of corruption and related offences and to ensure the Bureau conduct its operations independently and perform its functions effectively under the preamble of the Act.⁵⁰This is the Act deal with the criminal offence based on the cases of corruption in nature either by the Bureau itself or the court if there is direction from the director of public prosecution.

Right to fair hearing under the PCCA

The provisions of section 9 of the Prevention and Combating of Corruption Act⁵¹ provides for the institution of criminal proceeding the Director general or person authorized by him who seize any property in pursuance of the power conferred under the Act has to institute a criminal proceeding against owner of the property within six month from the date of seizure, section 9(5) of the Prevention and Combating of Corruption Act⁵² gives the director general the authority to demand information from and to compel anyone to appear in person so that they can answer questions. This gives the person in question the opportunity to prepare a defense, be heard and if feasible, select the attorney of their choice to represent them before the Bureau in order to fulfill their right to a fair trial.

THE EVIDENCE ACT, 1967

The right to fair trial and presumption of innocence under TEA

The Act provides for the examination of witness under section 146 of the Evidence Act⁵³ which among other thing ensure that the witness had a time prepare his or her defense this is as good as the right to be heard and the right to fair trial will be attained in this stage, also according to provision of section3(2)(a) of the Evidence Act⁵⁴ provides that in criminal matter, except where any statute provides otherwise, the court is satisfied by the prosecution beyond reasonable doubt that the fact existed and also the provision of section 110 of the Evidence Act⁵⁵ provides for the burden of proof which in criminal cases the burden of proof rely on the prosecution side and this emphasize on the right of accused to be presumed innocent until proved guilty by the court of competent jurisdiction. In the case of Daimu Daimu Rashid@Double D vs Republic⁵⁶

⁴⁹ Cosmas Raymond M (2023), *Evaluation of the Right to Legal Representation before the Ward Tribunal in Tanzania*, journal of *Modern Law and Policy*. P.21.

⁵⁰ Cap. 329[R.E 2022].

⁵¹ Cap. 329[R.E 2022].

⁵² Cap. 329[R. E 2022].

⁵³ Cap. 6 [R. E 2022].

⁵⁴ Cap. 6 [R. E 2019].

⁵⁵ Cap. 6 [R. E 2019].

⁵⁶ *Criminal Appeal No. 5 of 2018 Court of Appeal of Tanzania at Mtwara (Tanzlii)*.

quoted with approval the case of Samson Matiga vs Republic⁵⁷ it was held that ‘‘ According to the law a prosecution case must be proven beyond a reasonable doubt in other words the prosecution's evidence must be compelling enough to establish the accused person's criminal responsibility. Evidence of this kind must unmistakably identify the accused as the criminal and no one else. This clause places a strong emphasis on the accused right to be deemed innocent since the prosecution has the burden of proof and the accused must remain innocent until the prosecution proves otherwise in a court of law.

THE NATIONAL SECURITY ACT, 1970

This Act is established for the purpose of protecting the state security to deal with espionage, sabotage and other activities prejudicial to the interest of United Republic of Tanzania 1977.

Right to freedom of movement and presumption of innocence under National Security Act

Under section 12 the National Security Act⁵⁸ provides for the right to presumption of innocence that a person should be presumed innocent for the purpose prejudicial to safety or interest of the United Republic of Tanzania 1977, this provision is in conformity with the Constitution of United Republic of Tanzania very direct in the right of the accused person to be presumed innocent until proven otherwise also the provision of section 19 of the National Security Act⁵⁹ provides for the right to bail which is interpreted by courts to be the right to personal freedom as well as the presumption of innocence, although it is upon the certification in writing by the Director of Public Prosecution.

THE NATIONAL PROSECUTION SERVICES, 2008

This Act is established to provide for the organization, management, monitoring, and supervision of prosecution and coordination of investigation with the view to promote and enhancing dispensation of criminal justice and provided for other related matter under the long title of the National Prosecution Service Act.⁶⁰ National Prosecution Services (NPS) is established under section 4 of the National Prosecution Services Act,⁶¹ which includes the President's appointment of the Director of the Public Prosecution (DPP) in line with Article 59B of the Constitution of United Republic of Tanzania.⁶² It also includes the Deputy Director of Public Prosecution who is chosen by the president from among those qualified to serve as Tanzania High Court judges, as well as regional and district officers, law officers, state attorneys, and other public officials required for the proper and efficient execution of the duties and exercise of the Director of Public Prosecution authority. Section 9 of the National Prosecution Service Act 2008

⁵⁷ *Criminal Appeal No. 205 of 2007 (unreported)*.

⁵⁸ Act No 3 of 1970.

⁵⁹ Act No. 3 of 1970.

⁶⁰ Cap.430 [R.E 2022].

⁶¹ Cap. 430 [R.E 2022].

⁶² Cap. 2.



⁶³ mandates the power and functions of the National Prosecution Service such as taking and carrying out criminal cases, ordering police and other investigative agencies to look into any criminal information, organizing and supervising criminal investigations and carrying out criminal prosecution in courts of law and other court martial's, among other things. The guiding principles of doing justice, preventing the abuse of legal proceedings, protecting the public interest and controlling criminal proceedings are highlighted in Section 8. These principles are in place to protect the accused person's interest in ensuring that the proceedings are carried out fairly and that the accused person receives his or her rights including the right to be heard, the right to information, and the right to be presumed innocent. All of these are necessary to ensure that the natural justice principle is upheld.

THE LEGAL AID ACT, 2017

This act was enacted for the purpose of regulating and coordinating the provisions of legal aid and services to the indigent person, to recognize paralegals and to provide for other related matters provided under the long title of the Legal Aid Act.⁶⁴ This Act under section 33(1)(a) and (b) stipulates that in criminal proceedings, if the accused person's means are insufficient to allow him to obtain legal assistance, the presiding judge or magistrate must certify that the accused should have legal aid in order to prepare and conduct his defense or appeal as the case may be. The registrar will then assign to the accused a legal aid provider that has an advocate for the purpose of preparing and conducting the defense or appeal as the case may be.

This act intended to benefit accused persons whose means were insufficient to enable them to obtain legal services in their preparation for defense.⁶⁵ demonstrates how crucial the right to legal representation is in the criminal justice system which is why the court will prepare a lawyer for someone who is accused in a high court but lacks the funds to hire one in order to fulfill his or her legal right to be represented in accordance with the law and to ensure a fair trial.⁶⁶

3.1 CONCLUSION AND RECOMMENDATIONS

The laws outline the accused person's rights and the steps they must take to take them in court and other quasi-judicial settings. The Criminal Procedure Act, the Economic and Organised Crimes Control Act, and the National Security Act, which deal with the right to bail, appear to have issues protecting the accused rights during criminal proceedings.

⁶³ Cap. 430 [R.E. 2022].

⁶⁴ Cap. 21 [R. E 2019].

⁶⁵ *Eventius, Mogyabusu (2019) Basic Principle of the Legal Aid Legislation and Their Incorporation in the Tanzania Legal Aid Act, 2017, the Tanzania Legal Aid Journal Vol. 1. Tanganyika Law Society at Dar es Salaam.*

⁶⁶ *Peter, C.M Legal Aid and Access to Justice in Zanzibar: Examining Criteria for provisions of Legal Assistance, P. 22*

Article 13(1) of the Constitution of the United Republic of Tanzania⁶⁷ recognizes the right to equality before the law. This right is subject to restrictions, and if the Director of Public Prosecution did not certify in writing that the accused lacked the right to bail, this would constitute a violation of the principle of equality before the law. And it is also recognized under various international legal instruments such as the Universal Declaration of Human Rights, it is the requirement that the parties to the case has to be treated equally under the eyes of the law.⁶⁸ Judges and magistrate have to ensure that all parties to case being Director of Public Prosecution or accused are equally protected by the law. The adversarial justice system Director of Public Prosecution and accused person deserve similar and equal treatment,⁶⁹ Director of Public Prosecution (DPP) under the laws of the land is given power which can interfere with the accused right to liberty guaranteed under the Constitution of United Republic of Tanzania 1977 which views the Director of Public Prosecution over and above the accused person, the certificate written by the Director of Public Prosecution is against equality before the law. Violation of the right of fair hearing, presumption of innocence and right to Liberty the adjudication rules require the decision maker to hold a fair hearing before making a decision. Fair hearing is founded on the right to be heard, which requires the parties to the case to be heard, the rule against bias in the sense that no man is supposed to be a judge in his cause, and the right to be given reasons for the decision.⁷⁰ The right to fair hearing is important in the administration of criminal justice. If this right is violated in respect of any decision, that decision must be declared null and void.⁷¹ The High Court of Tanzania held that a fair hearing is founded on natural justice, which requires that no man shall be a judge in his case (*nemo iudex in causa sua*) and that no man shall be condemned unheard (*audi alteram partem*).⁷² Section 148(5) of the Criminal Procedure Act and section 19 of the National Security Act and Section 29 of the Economic and Organised Crimes Control Act which denies bail to accused persons is unconstitutional being in contravention of Articles 13(6)(b) (Right to presumption of innocence) and 15 (Right to Personal Freedom) of the Constitution of the United Republic of Tanzania 1977 as That, section 148 (5) of the Criminal Procedure Act⁷³ violates the right to personal liberty and presumption of innocence guaranteed by Articles 13(6)(b) and 15(1) and (2) of the Constitution of United Republic of Tanzania 1977.⁷⁴

⁶⁷ Cap 2.

⁶⁸ *Ndyanabo vs Attorney General [2002] LRC 541*

⁶⁹ *Attorney General vs Jeremiah Mtobesya, Court of Appeal of Tanzania at Dar es Salaam, civil Appeal No. 65 of 2016 (unreported) p 62.*

⁷⁰ *Chipeta, B, D Administrative law in Tanzania p. XL.*

⁷¹ *General Medical Council vs Spackman (1943) AC 627 p. 644.*

⁷² *Felix Mselle vs Ministry of Labour and Youth and three others [2002] TLR 447.*

⁷³ Cap. 20 [R.E 2022].

⁷⁴ Cap 2.



- First, the Economic and Organized Crime Control Act⁷⁵ under Sections 36(2) and (3), the Criminal Procedure Act⁷⁶ under Section 148(4) and the National Security Act⁷⁷ under Section 19 which give the Director of Public Prosecution the authority to certify in writing that bail has been denied should be repealed. Since these laws conflict with Articles 13(6)(a), 107A(1) and Article 4 of the United Republic of Tanzania Constitution 1977⁷⁸ they must be repealed and replaced.
- Second, in order to strengthen the separation of powers as stipulated by Article 4 of the Constitution of United Republic of Tanzania,⁷⁹ it is advised that Sections 36(2) and (3) of the Economic and Organized Crime Control Act⁸⁰ and Section 148(4) of the Criminal Procedure Act⁸¹ be changed to give the Court authority over the DPP. The Director of Public Prosecution's authority should be restrained by the court when it goes against the interests of justice. This will stop the accused from abusing their rights during a criminal trial by simply refusing to post bail.
- To give an accused individual the right to hearing provisions ought to be changed, the criminal justice system cannot function well without the right to be heard. A person must be given the opportunity to submit his defense and the freedom to select the legal counsel of his choosing before being deprived of his liberty or interest. No process much less one that is reasonable, equitable, and suitable is prescribed by the rules that give the Director of Public Prosecution the authority to certify in writing the refusal of bail. The accused is not given a chance to be heard before the DPP's certificate takes away his freedom under the contested provisions. Accordingly, Article 13(6)(a) of the Constitution of the United Republic of Tanzania 1977 which protects the right to be heard is violated by 36(2)(3) of the Economic and Organized Crime Control Act 148(4) of the Criminal Procedure Act and section 19 of the National Security Act. The proposed modification will thereby bring the bail provisions into compliance with the Constitution.
- Similar enactments and revisions are required to address the legal representation gap in other laws, such as those governing the Ward Tribunals, so that the parties have the right to legal representation and ensure that justice is served.

⁷⁵ Cap. 200 [R.E 2022].

⁷⁶ Cap. 20 [R. E2022].

⁷⁷ Act No 3 of 1970.

⁷⁸ Cap. 2.

⁷⁹ Cap. 2.

⁸⁰ Cap. 200 [R. E 2022].

⁸¹ Cap. 20 [R. E 2022].

