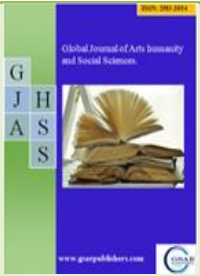
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LEGAL CHALLENGES AND THE EFFECTIVENESS OF SEARCH AND SEIZURE IN TANZANIA: A FOCUS ON RECEIPT ISSUANCE

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Abstract

Taking into consideration on the important function that receipt issuance plays in maintaining the integrity of search and seizure procedures, this work evaluates the efficacy and legal difficulties of search and seizure operations in Tanzania. In order to gather evidence and combat crime, Tanzanian law enforcement relies heavily on search and seizure procedure. A major problem, meanwhile, is the absence of precise, as o what amount to receipt for providing during these processes.

A receipt serves as an official record of the items seized and protects the rights of individuals by ensuring transparency and accountability. The article examines how having no clear meaning of receipt and with no prescribed format of a receipt can undermine the entire search and seizure process, leading to serious legal implications like having a conflicting decision of the courts of record. This failure may result in the inadmissibility of crucial evidence, confusion regarding the legality of the search, or even the wrongful acquittal of accused persons who can use the gaps to escape the hands of justice. Through case analysis and review of the legal framework, the article highlights the urgent need for clear, consistent procedures in search and seizure operations to ensure the protection of property rights, uphold the rule of law, and prevent accused individuals from evading justice due to procedural shortcomings.

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Introduction

In Tanzania, the legal framework on search and seizure seek to strike a balance between the protection of individual rights (the accused person), the prevention of crime for the protection of society (victims for the crime committed) which at the end lead to the administration of justice as per the rationale behind section 38 of the Criminal Procedure Act.¹ In the process of search and seizure there is a need to provide receipts in order to record confiscated goods and maintain accountability to all parties in the process that is to say to the seizing officer, to the accused person and to the victim.² However, difficulties and ambiguities in the

process of it may might damage public confidence and compromise the integrity of law enforcement operations. With an emphasis on the legal and procedural concerns related to receipt issuing, this study investigates the efficacy of search and seizure operations in Tanzania so as to find out whether the law is effective and evaluate their significance for law enforcement by examining relevant laws, and case laws.

Search

A search refers to the act of looking through a person's property, belongings, or premises in order to find evidence of a crime or illegal activity. It normally involves law enforcement authorities who, based on reasonable suspicion or legal authorization, examine locations such as homes, vehicles, or personal items to uncover illegal substances, stolen goods, or other related materials.³ A

¹ Cap 20 [R.E 2022]

² Kaplan J (1961) *Search and Seizure: A No-Man's Land in the Criminal Law, California Law Review*, Vol. 49, No. 3 (Aug., 1961), pp. 474

³ *Black's Law Dictionary*



search can be conducted with or without a warrant, depending on the circumstances. Search is an essential aspect of criminal justice in Tanzania, serving as a critical tool for law enforcement officials in uncovering evidence of crimes and contraband. Under the Tanzania Criminal Procedure Act⁴, searches are carried out to find relevant items, which can include physical objects or digital data. Generally, a warrant is needed for a search to be legally authorized, ensuring the protection of individual rights. Searches can be made on various subjects and locations, including people, vehicles, properties, containers, and other items, as stated in section 42(1)(b) of the Criminal Procedure Act.⁵ This process is aimed at collecting evidence to support the development of a case for prosecution.

A search can be conducted as part of the regular procedure under Section 38 of the Criminal Procedure Act, or in an emergency situation under Section 42 of the same Act. Section 38(1) grants authority to any police officer in charge of a police station, if they believe there is a reasonable cause, to carry out a search immediately. This can involve searching a building, vessel, vehicle, container, or any other location, or the officer can give written permission for another police officer to carry out the search.

Section 2 of the Criminal Procedure Act⁶ defines the term "officer in charge of a police station" to include any officer with a higher rank than an OCS, as well as any officer above the rank of constable who is either currently holding or acting in the position of the officer in charge of a police station.⁷ The officer conducting the search should comply with all requirements under Section 38 of CPA and his testimony should reveal such grounds.

The officer who seizes an item must provide a receipt acknowledging the seizure, which should be signed by the owner or occupant of the premises, their close relative, or any person currently in possession or control of the premises. Additionally, the signatures of any witnesses to the search should be included, if applicable. Moreover, failing to follow Section 38 does not necessarily invalidate the search, particularly when there is no dispute about the suspect being found with the item in question, and when the suspect admits to having possessed it.⁸ When a search is conducted under Section 40 of the Criminal Procedure Act, a police officer or any other individual named in the search warrant issued by the court may carry out the search on any day between sunrise and sunset. However, the court may also authorize the search to be carried out at any time, regardless of the hour.

⁴ Cap 20 [R.E 2022]

⁵ Cap 20 [R.E 2022]

⁶ Cap 20 [R.E 2022]

⁷ National Prosecution Service (2023) *Criminal Prosecution Manual*, National Prosecutions Service, College of Business Studies and Law-UDOM at pp 4

⁸ National Prosecution Service (2023) *Criminal Prosecution Manual*, National Prosecutions Service, College of Business Studies and Law-UDOM at pp 4

The difference between searches conducted under Sections 38 and 40 of the Criminal Procedure Act lies in the procedure and timing. Under Section 38, the officer in charge of a police station, or any police officer authorized by them, can carry out a search at any time with a written authority (search order). In contrast, under Section 40, a search can only be carried out by a police officer or another individual after obtaining a search warrant issued by the court. This search must be executed between sunrise and sunset, unless the court grants permission for it to be carried out at any time upon application.⁹

In Tanzania, searches are carried out following strict legal guidelines that prioritize the protection of individuals' rights and privacy. These rules define the procedures and extent of searches, ensuring that law enforcement officers operate within the law. Searches can take place at any time, provided they meet the necessary legal conditions. Depending on the type of search, such as those involving individuals or private homes, a stronger justification, like reasonable suspicion or probable cause, may be required. These legal protections are in place to prevent arbitrary searches, while still enabling law enforcement to carry out effective criminal investigations.¹⁰

Seizure

As legal terms, "seizure" refers to the act of the government or its agents taking possession of someone's property. This usually happens to enforce a court order or when the property is believed to be connected to illegal activity. Seizures can take various forms, with one common type being "forfeiture," where the government permanently takes ownership of property involved in criminal acts. For example, if someone is caught selling illegal drugs, the police may confiscate their money and vehicle. This is done to prevent criminals from benefiting from their crimes and to discourage illegal behavior.¹¹

The government cannot seize property without a legitimate reason, as the law safeguards individuals from unlawful seizures. There are rules in place to ensure that seizures are justified, and individuals have the right to challenge the process if it was not carried out correctly.¹²

Certificate of Seizure

The certificate of seizure is a document issued by the police officer who seizes an item during a search. It serves as proof that the item was lawfully taken during an investigation, ensuring transparency and helping maintain the chain of custody. The officer provides a receipt to confirm the seizure of the item (such as property,

⁹ Ibid

¹⁰ National Prosecution Service (2023) *Criminal Prosecution Manual*, National Prosecutions Service, College of Business Studies and Law-UDOM at pp 4

¹¹ <https://www.legalbriefai.com/legal-terms/seizure>, Accessed in October, 2024.

¹² <https://www.legalbriefai.com/legal-terms/seizure>, Accessed in October, 2024.



evidence, or contraband). This receipt includes details about the seized item, the signature of the owner or occupant of the property, and any witnesses present during search.

A Receipt

In a business context, a receipt is a written or digital document that confirms the seller has received payment from the buyer. It typically includes the date of the transaction and a description of the item purchased. In business-to-business transactions, receipts also include details about the buyer and the payment method. It serves as proof to the customer that the seller has been paid for a product or service. While the term "receipt" is commonly used in business transactions, it is not specifically defined in criminal law or procedure concerning search and seizure.¹³ Receipt in the context of search and seizure has not defined by the criminal procedure Act or any Act related to criminal investigation and procedures in Tanzania.

The Effectiveness of the Law on Search and Seizure

In criminal law, search and seizure refers to the process where law enforcement officials inspect a person's home, vehicle, or business to gather evidence of a crime. A search involves the officers examining part or all of an individual's property in search of specific items linked to a suspected crime. Seizure occurs when the officers take possession of any items found during the search that are believed to be related to the crime.¹⁴

In any criminal trial, investigators must show that the protocols followed during the search and seizure was compliant with applicable laws in order for evidence to be presented by the prosecution and accepted by the court.¹⁵

Section 38(3) of the Criminal Procedure Act¹⁶ and that of the Police Force and Auxiliary Service Act¹⁷ do require that the receipt should be given to the accused person after the seizing officer has seizing the items. Whereby the wording of the provision of section 38(3) of the Criminal procedure Act provides that;

Where anything is seized in pursuance of the powers conferred by subsection (1) the officer seizing the thing shall issue a receipt acknowledging the seizure of that thing, being the signature of the owner or occupier of the premises or his near relative or other person for the time being in possession or control of the premises and the signature of witnesses to the search, if any.

¹³ <https://marketbusinessnews.com>. Accessed in Nov. 2024.

¹⁴ KRITZER, Herbert M. and Richards, Mark J.,(2005) "The Influence of Law in the Supreme Court's Search-and-Seizure Jurisprudence". Peer Reviewed Articles.

¹⁵ WHITMAN, Michael E. (2005) computer forensics search and seizure: challenges in the academe, Proceedings of the 2005 Southern Association for Information Systems Conference

¹⁶ Cap 20 [R.E 2019].

¹⁷ Cap 322[R.E 2002].

Section 35(3) of the Police Force and Auxiliary Services Act stipulates that when an item is seized under the authority granted in subsection (1), the officer conducting the seizure must provide a receipt. This receipt must acknowledge the seizure and include the signatures of both the property owner and any witnesses present during the search.

Furthermore, the Police General Order 226(2)(d)¹⁸ provides that where anything is seized in pursuance of search the officer seizing the thing shall issue a receipt acknowledging the seizure of that thing, bearing the signature of the owner or occupier of the premises or his near relative or other person for the time being in possession or control of the premises, and the signature of witnesses to the search, if any.

Neither the sections of the laws mentioned above nor the Police General Order make any reference to a Certificate of Seizure. The law explicitly requires the officer who seizes an item or items to issue a receipt acknowledging the seizure. In other words, the Criminal Procedure Act and the Police Force and Auxiliary Services Act do not address the use of a Certificate of Seizure. However, in practice, police officers often use a Certificate of Seizure instead of the required receipt.

It has been stated by one of the Senior Police officer stated,¹⁹back in the days during search they tend to request from the court to provide the receipt to be issued to the accused person after seizing items, but the Court had no format, then after sometime later pursuant to the authority granted to the Inspector General of Police (IGP) as per Section 7(2) of the Police Force and Auxiliary Services Act²⁰ issued Police Form No. 91 referred to as the P.F. 91 in the Record of Search Order by the Police Officer book. The P.F 91 has three parts the first two parts contains the details of the Seized officer and the third part contain the Certificate of Seizure. P.F 91 is the result of the powers conferred to the IGP under section 7(2) of the Police Force and Auxiliary Services Act.²¹ It was expected the Certificate of Seizure should mention at least in the PGO, but the PGO also is silent on the Certificate of Seizure and it also give the requirement of receipt.

So to say in practice the seizing officers conferred powers to do so under section 38(1) of the Criminal Procedure Act²² are using the Certificate of Seizure to replace receipt when it comes the requirement of the receipt under Section 38(3) of the Criminal Procedure Act²³, because after having the Certificate of Seizure under P.F 91 the Police Officer during Search and Seizure they had

¹⁸ P.G.O. No. 226(2)(d)

¹⁹ One of the Senior Police Officer at Central Nyamagana Police Station, explaining how they started to use Certificate of seizure instead of Receipt, the interview was conducted on 23rd August 2024.

²⁰ Cap. 322 [R. E. 2002].

²¹ Cap. 322 [R. E. 2002].

²² Cap 20 [R.E 2019].

²³ Cap 20 [R.E 2019].



never bothered the Court to provide for receipt for seizure as they use to do before²⁴

Looking on the referred cases at hand there is no even a single case which shows that the receipt was given to the accused person so as to acknowledge that the seized officer has seized the items or properties from the accused person as required for under section 38(3) of the Criminal Procedure Act,²⁵ section 35(3) of the Police Force and Auxiliary Services Act²⁶ and Police General Order 226(2)(d)²⁷. What has been used in all the cases discussed was the Certificate of Seizure and recently the court has already stated impliedly that the Certificate of Seizure and the Receipts and Certificates of Seizure are distinct documents, but both serve the same purpose: to acknowledge that the seizing officer has taken items from the accused person. As a result, if a Certificate of Seizure is present, the receipt may become redundant, and vice versa.

The Certificate of Seizure in Part Three under P.F. No. 91 has certain shortcomings, as some versions lack fields for essential details such as the particulars of the seized items, the seizing officer, and the signatures of witnesses. Additionally, it does not provide space for the signature of the accused person or the occupier of the premises, which is required under Section 38(3) and 35(3) of the Criminal Procedure Act.²⁸ and the Police Force and Auxiliary Services Act²⁹ respectively.

When an accused person signs the Certificate of Seizure, it can make the procedure invalid. In the case of Michael Emmanuel John v. R.³⁰ where no receipt was issued to acknowledge the seizure of two firearms, the Court of Appeal ruled that the lack of a receipt did not invalidate the evidence showing that the firearms were retrieved from the appellant. The court noted that the oral testimony of PW1 and PW2 indicated that the appellant had led the police officers to the crime scene where the firearms were recovered. It is well-established in our legal system that when a Certificate of Seizure is prepared and signed by the accused, it effectively serves as an acknowledgment receipt. The accused person's signature is a mandatory requirement in such cases. The absence of the accused person's signature on the Certificate of Seizure can provide an opportunity for the accused to avoid signing the document, which may create a valid ground for an appeal. This could potentially allow the accused person to escape justice.

²⁴ *One of the Senior Police Officer at Central Nyamagana Police Station, explaining how they started to use Certificate of seizure instead of Receipt, the interview was conducted on 23rd August 2024.*

²⁵ *Cap 20 [R.E 2019].*

²⁶ *Cap. 322 [R. E. 2002].*

²⁷ *P.G.O No. 226(2)(d)*

²⁸ *Cap 20 [R.E 2019].*

²⁹ *Cap. 322 [R. E. 2002].*

³⁰ *High Court of Tanzania, at Dodoma CA No. 720 of 2023*

Challenges on the Law Regulating Search and Seizure in Tanzania

The Criminal Procedure Act under Section 38(3)³¹ provides that the owner or occupier of the property, his close relative, or another person currently in possession or control of the property must sign a receipt acknowledging the seizure of the item, as well as the signatures of any witnesses to the search, if any, when anything is seized in accordance with the authority granted by subsection (1).

The law mandates the issuance of a receipt during search and seizure, with the wording of the provision emphasizing its mandatory nature. However, this has led to conflicting decisions from the Court of Appeal. Initially, the court held that the receipt was a compulsory requirement in search and seizure procedures, and its absence would render the procedure invalid. The Court of Appeal further ruled that a receipt could not be equated with a Certificate of Seizure. This created a disadvantage for the prosecution, as a conviction could not be secured if the seizing officer conducted a search, found items, and seized them without issuing a receipt.

Taking an example in the case of Andrea Augustino @Msigara and Another vs R.³² where the Court of Appeal acquitted the accused person and the Court held that:

"Considering the above section and the fact that no receipts were issued by PW2 and PW3 in the present case, it is clear that the procedure was flawed. Furthermore, as correctly pointed out by Mr. Kibaha, the interpretation of the receipt provided by Mr. Mauggo is incorrect, as there is no way a certificate of seizure or seizure form can be considered equivalent to a receipt."

However different judgment in the Courts of record provides that it is not mandatory for the officer seizing a thing to provide a receipt if the said officer had a signed Certificate of seizure. In the case of Ramadhani Mchafu vs. R.³³ where the Court stated that having certificate of seizure signed by the accused person is enough to prove that the items was seized to the accused person and lack of the receipt as it is required under Section 38(3) is not fatal.

Same views has been discussed in the case of Shabani Ally Athumani V. R.³⁴ The Court of Appeal further stated that they strongly believe that by signing the Certificate of Seizure, the appellant acknowledged being in possession of the government trophy. In light of this, the court concluded that the failure to issue a receipt was not fatal.

Further more in the case of Papaa Olesikaladai @Lendemu and Another V. R.³⁵ the Court of Appeal stated that; ... the non issuance of receipt will have no places in cases where the Certificate of

³¹ *Cap 20 [R.E 2019].*

³² *The Court of Appeal of Tanzania at Tanga Criminal Appeal No. 365 of 2018,*

³³ *Court of Appeal of Tanzania, at Arusha CA No. 328 of 2019*

³⁴ *Court of Appeal of Tanzania, at Arusha CA No. 151 of 2020*

³⁵ *Court of Appeal of Tanzania, at Arusha CA No. 47 of 2020*



Seizure is issued. Recently in the case of Michael Emmanuel John V. R³⁶ that no receipt was issued acknowledging taking of the properties, The Court of Appeal stated that although no receipt was issued to acknowledge the seizure of the two firearms, it is their firm belief that this does not invalidate the evidence that the firearms were recovered from the appellant. The court emphasized that the testimonies of PW1 and PW2 show that the appellant directed the police officers to the crime scene to recover the firearms. Additionally, it is well-established in our legal system that when a Certificate of Seizure is prepared and signed by the accused, it serves as an acknowledgment of the seized properties from the accused person.

Despite the challenges posed by the legal framework governing search and seizure in Tanzania, law enforcement agencies play a crucial role in ensuring the requirement of issuing receipts during search and seizure operations is met. The study highlights that the search and seizure process within the legal system grants law enforcement the authority to search individual suspects, their properties, or belongings, and to seize evidence linked to a suspected crime. Seizure occurs when officers take possession of items during the search, and to confirm this, the officer conducting the search must issue a receipt acknowledging the seizure. Therefore, enforcement agencies play a key role in ensuring that the receipt requirement is properly implemented.

In carrying out their duty to issue receipts, police officers face challenges because the law does not clearly specify what a receipt should look like or how it should be administered. However, the respondents have acknowledged the efforts of the Inspector General of Police (IGP) for introducing prescribed forms for the Certificate of Seizure and search warrants, which include the Certificate of Seizure. This has helped in fulfilling the legal requirement of issuing a receipt during search and seizure.³⁷ But still what has been provided by the IGP is not receipt but a certificate of seizure which is not as per the requirement of the law, since the law under Section 38(3) of the Criminal Procedure Act provide for the requirement to issue receipt of seizure and not certificate of seizure.

Conclusion

The law regulating search and seizure, particularly Section 38(3) of the Criminal Procedure Act, lacks clarity, which has led to its ineffectiveness and conflicting decisions. From the cited cases between 2018 and 2023, the Court of Appeal has issued contradictory rulings. Some decisions assert that a Certificate of Seizure cannot be considered equivalent to a receipt, while others maintain that the Certificate of Seizure can serve as a receipt if it is properly signed by the accused, acknowledging that the items were found in their possession.

Despite the principle of the doctrine of precedent, which dictates that the most recent decision takes precedence, the ruling now

³⁶ *High Court of Tanzania, at Dodoma CA No. 720 of 2023*

³⁷ *Senior Police Officers at Nyamagana Police Station (Central) in the Interview conducted in 23rd September 2024.*

establishes that if a Certificate of Seizure is issued and properly signed by the accused to acknowledge the seized property during a search and seizure, it is considered equivalent to a receipt. However, the study has revealed that numerous appeals have been filed in both the Court of Appeal and the High Court, with the primary ground of appeal being non-compliance with Section 38(3) of the Criminal Procedure Act. In these cases, the seizing officer issued a Certificate of Seizure instead of the required receipt.

Recommendations

To prevent unnecessary appeals, which often contribute to case backlogs in the courts and the National Prosecution Service office, there is a need to amend the relevant sections, including Section 38(3) of the Criminal Procedure Act, Section 35(3) of the Police Force and Auxiliary Services Act, and P.G.O No. 226(2)(d). These amendments will help provide clarity and ensure public confidence in the institutions responsible for upholding rights and interests during the administration of the Criminal Justice System in Tanzania.

The amendments should be made to eliminate any doubts for both the courts and the investigation and prosecution authorities. The focus of the criminal justice process should not solely be on securing a conviction for the prosecution or an acquittal for the accused, but on ensuring strict adherence to constitutional provisions and other laws related to crime. This will ensure that individuals who break the law are held accountable while upholding the principles of justice.

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