

	<b>Global Journal of Arts Humanity and Social Sciences</b>			
	ISSN: 2583-2034			
	Abbreviated key title: Glob.J.Arts.Humanit.Soc.Sci			
	Frequency: Monthly			
	Published By GSAR Publishers			
Journal Homepage Link: <a href="https://gsarpublishers.com/journal-gjahss-home/">https://gsarpublishers.com/journal-gjahss-home/</a>				
Volume - 4	Issue - 12	Dec 2024	Total pages 1296-1302	

## CAUTIONED STATEMENTS IN TANZANIA: A LEGAL PERSPECTIVE ON THEIR ADMISSIBILITY IN CRIMINAL TRIALS

By

Fortunata Guvette<sup>1</sup> and Dr. Neema Bhoke Mwita<sup>2</sup>

<sup>1</sup>LLM (Economics), St. Augustine University of Tanzania (SAUT), Mwanza, Tanzania

<sup>2</sup>Senior Lecturer, School of Law, St Augustine University of Tanzania.



### Abstract

*Criminal investigation is a key component of the criminal justice system, wherein the investigative authorities obtain a suspect's statement. To ensure the integrity of the process, the statement must be given voluntarily and only after the suspect has been warned beforehand. The burden of proof lies with the prosecution to demonstrate that the statement was provided voluntarily. If the investigative apparatus uses force to coerce the suspect into making a statement, there is a risk of the suspect falsely confessing to a crime they did not commit.*

*Laws and regulations are in place to oversee the investigative process and establish the factors to consider when questioning a suspect, ensuring that the statement is given voluntarily and of the suspect's own volition. If the investigatory authorities violate these cautionary statement provisions, a confession made under such circumstances will be deemed inadmissible at trial.*

*This article examines the concept of the cautioned statement under the Criminal Procedure Act, focusing on the criteria that must be met for such a statement to be admissible in court. It also explores the conditions under which a cautioned statement may be rendered inadmissible in trial proceedings*

**Keywords:** Admissibility, Cautioned Statement and Criminal Trial in Tanzania

### Article History

Received: 11- 12- 2024

Accepted: 21- 12- 2024

Published: 24- 12- 2024

Corresponding author

**Fortunata Guvette**

### 2.1 Introduction

Tanzania operates under an adversarial legal system, where the prosecution holds the burden of proving the defendant's guilt in all criminal cases. The standard of proof required is always beyond a reasonable doubt. In this context, it is established that an offense has been committed, and the evidence points to the detained suspect as the sole perpetrator of the crime. Once these two facts are substantiated by the evidence, the case is considered proven beyond a reasonable doubt.

There are various forms of evidence that can be used to prove a case beyond a reasonable doubt, including cautioned statement which is the statement of the accused person, circumstantial evidence, oral testimony, and evidence of an eye witness which is the statement of a witness who saw the offence been committed and heard from the victim himself soon after the commission of

crime. Nevertheless for the purpose of this Article, only cautioned statement and its admissibility in court will be covered.

### 2.2 Underpinning Key Concepts on Cautioned Statement

#### Cautioned Statement

Cautioned statement are the oral or written statements made by a criminal suspect under the police custody after being warned that the statements may be used as evidence against him in court of Law.<sup>1</sup>

Certainly, before being questioned about a crime, those in detention are undoubtedly given a legal warning informing them of their rights. Depending on the jurisdiction, the precise wording of the caution may vary, but it typically consists of the following: the

<sup>1</sup> Hardins, J. Davies P, and Mair; G. (2018). *An Introduction to Crime and Criminal Justice System*, SAGE Publishing Inc



suspect has the right to legal counsel before answering any questions and to have legal counsel present when being questioned; and the warning that anything the suspect says could be used against him or her in court.<sup>2</sup>

When the accused person is being cautioned or warned for a particular crime, they are ready to pay attention to their rights, particularly those related to self-incrimination, and are given the opportunity to choose whether to answer the questions or keep silent. As long as the warning was delivered truthfully and freely and the person voluntarily and consciously relinquished their rights, whatever statement they make after receiving the said warning may be allowed as evidence in court. Any further statements may be excluded as evidence if a warning is not given or is given improperly.<sup>3</sup>

There are two methods for recording cautioned statements: the one that is recorded when the suspect makes an unsolicited or offered statement by himself<sup>4</sup> and the one that results from either the suspect's voluntary remarks or their partial responses to the questions posed the police officer taking the statement.<sup>5</sup>

Cautioned statement may also be totally exculpatory or inculpatory. Inculpatory statement is the one which incriminate the maker of the statement; it is that substantiation that displays or inclines to show, a person's participation in the crime, or evidence which can create guiltiness of a person, while the exculpatory statement is the one which tends to explain the innocence of the maker, or tending to justify or absolve the alleged fault or guilt of the accused person.<sup>6</sup> When the cautioned statements are totally inculpatory may amount to a confession and when the person interviewed makes a confession either orally or in writing relating to an offence, the police officer shall instantly during the interview or after the interview is completed make a record in writing.<sup>7</sup>

In order to ensure that individuals in custody or detention are aware of their legal rights before the entire process of being questioned by law enforcement, a cautioned statement is taken. This helps to inform suspects of their legal rights, including the right to counsel and the right to stay silent. This guarantees that they are aware of their rights prior to being questioned. However, by reminding suspects of their rights, particularly the right to silence, they will be better protected against self-incrimination because they will be reminded that they have the option to not answer any questions that could be used against them in court.<sup>8</sup>

It also helps to guarantee that any statements given by the suspect during interview were voluntarily made. It is only after being

aware of their rights, the suspects can make a knowledgeable assessment about whether to answer questions or request legal representation and give the statement freely without being forced or coerced.<sup>9</sup>

Cautioned statements are typically delivered to preserve constitutional values, advance justice and due process in the criminal justice system, and safeguard the legal rights of suspects who are detained. This is because, even if they are suspects in a criminal inquiry, it helps ensure that they are treated properly and have access to their constitutional rights.

### Criminal trial

The purpose of a criminal trial is to settle charges made against an accused individual, typically by the government. The majority of criminal offenders in common law regimes are entitled to a jury trial. The rights granted to criminal offenders are generally broad since the state is trying to use its authority to deny the accused their property, freedom, or life. Criminal trials are governed by the laws of criminal procedures.<sup>10</sup>

To determine guilt or innocence, common law systems employ an adversarial or accusatory process. With a judge serving as an impartial arbitrator of the law and a referee, it is assumed that the truth will more likely come out of the open struggle between the prosecution and the defense in presenting the evidence and arguing opposing legal positions. Although some common law jurisdictions have eliminated the jury trial, a jury is still used in some jurisdictions to decide the facts in more serious situations. Due to each competitor's self-interest, the issues become polarized, and the facts and legal interpretations are purposefully presented in a biased manner.<sup>11</sup>

The goal is for each party to evaluate the veracity, applicability, and sufficiency of the other's evidence and arguments through a process of argument and counterargument, examination-in-chief, and cross-examination. The prosecution bears the burden of proof, and there is a presumption of innocence to ensure justice.

### Admissibility

Evidence that can be offered to the judge or magistrate for consideration in reaching a decision is known as admissible evidence. The trial court judge applies the rules of evidence, which specify what kinds of evidence are acceptable, to the case. Generally speaking, for evidence to be admitted, it must be pertinent and not overruled by opposing arguments such as the evidence being unfairly biased, unclear, time-consuming, privileged, or, among other things, based on hearsay.<sup>12</sup>

<sup>2</sup> National Prosecutions Service, (2023). *Criminal Prosecutions Case Manual*

<sup>3</sup> Mtenga, O.M. (2023). *Criminal Practice Manual: Admissibility of Cautioned Statement*. Kiffi Blacksmith

<sup>4</sup> Section 58 of Cap. 20 [R.E 2022]

<sup>5</sup> Section 57 of Cap. 20 [R.E 2022]

<sup>6</sup> Section 57 of Cap. 20 [R.E 2022]

<sup>7</sup> Section 57 and 58 of Cap. 20 [R.E 2022]

<sup>8</sup> ANDERSON James, (2016), *A Book on Criminal Procedure and Practice; Caution Statement*, New York, London p53

<sup>9</sup> Mtenga, O.M. (2023). *Criminal Practice Manual: Admissibility of Cautioned Statement*. Kiffi Blacksmith

<sup>10</sup> Black, Henry Campbell (1990). *Black's Law Dictionary*, 6th ed. St. Paul, MN: West Publishing. pp. 156

<sup>11</sup> Hale, Sandra Beatriz (2004). *The Discourse of Court Interpreting: Discourse Practices of the Law, the Witness and the Interpreter*. John Benjamins. p. 31

<sup>12</sup> [https://www.law.cornell.edu/wex/admissible\\_evidence](https://www.law.cornell.edu/wex/admissible_evidence) accessed in October 2024



For evidence to get admitted in criminal trials, it must be relevant, material, and competent. This means the evidence must help prove or disprove some fact in the case. It doesn't need to make the fact certain, but at least it must tend to increase or decrease the likelihood of some disputed fact. Evidence is "competent" if it complies with certain traditional notions of reliability.<sup>13</sup>

The criteria of admissibility is relevance, however it is generally used in a narrow legal context rather than logically. Evidence of facts that are deemed irrelevant for the purposes of the Evidence Act is highly inadmissible, even though they may be logically relevant.

### 2.3 The Law Governing Cautioned Statement in Criminal trial in Tanzania

Criminal Procedure Act gives in details the procedures that are to be followed, beginning with initial investigation. The Act elaborates that, investigations begin once an investigative organ receives information that discloses the commission of an offence. Criminal Procedure Act provides that a person has a duty to report the commission of a crime.<sup>14</sup>

Information relating to the commission of an offence may be given orally or in writing to a police officer or to any other person in authority in the locality concerned and has to be recorded in the manner required by the Law. In supporting of the Caution Statement given by the suspect the Police Officer may require any other person whom they believe may provide collaborative evidence in relation to crime committed.<sup>15</sup>

Once a crime has been reported to the investigative organ, the officer receiving such information must immediately record it in the report book and take action to start investigation. The rationale is to timely gather evidence on every fact of the case.<sup>16</sup>

After the receiving of information about the commission of the offence or after the offence has been committed the suspected person has to be arrested, and this is the earliest stage of investigation, the purpose being to avoid the suspect to escape and to maximize the possibility of recovery of evidence. The Law empowers the police officer to arrest the suspect without warrant any person suspected to have committed or is about to commit an offence in his presence<sup>17</sup> and he may also arrest with a warrant.<sup>18</sup>

Magistrate is also empowered to arrest or direct any person to arrest a suspect when committed an offence in his presence provided that the power of the Magistrate to do so is within his jurisdiction<sup>19</sup> and even private person to arrest any person who in

his presence commits an offence<sup>20</sup> and he should without unnecessary delay to hand him over to the police officer or to the nearest police station or, in the absence of either of them, to the Ward Secretary or the Secretary of the Village Council for the area where the arrest is made.<sup>21</sup>

When the whole process of arresting the suspect is complete and the suspect has to be taken under police custody. The Law then requires the investigator or police officer to interview the suspect with the purpose of ascertaining whether the suspect has committed the said offence or not, and must cause that interview to be recorded in writings.<sup>22</sup> This is what is called cautioned statement because when writing the statement the Police officer will be required to caution the accused person that whatever he said will be used against him in court of law.

Criminal Procedure Act is the principal act which provides for the principles of caution statement and adherence to procedures relating to cautioned statement. Under the CPA it has shown various ways in which the statement can be obtained and the procedures to be followed by the Investigation officer when recording the statement. There are different ways of recording the statement of the accused as required by the law and these are, one which is the result of a volunteered and unsolicited statement of a suspect<sup>23</sup> and the one which is a result of either answers to questions asked or partly answers to questions asked and partly volunteered statements.<sup>24</sup> And when recording cautioned statement, the Law requires the same to be recorded within four (4) hours after the suspect is under restraint in respect of the offence.<sup>25</sup> Non-compliance of the said requirement renders the cautioned statement inadmissible before the Court of Law.

### 2.4 Factors to Consider when taking Cautioned Statement

Before recording the cautioned statement the investigating officer should record the statement in the Language that the suspect understands.<sup>26</sup> The officer taking cautioned statement or investigating officer also has to introduce himself by name and rank before he asks the suspect any question or asks the suspect to do anything for the purpose connected with the investigation of an offence. The statement has to contain the essential details of the suspect, including his full name, residential particulars and, or work address, telephone number and age of a suspect. It shall also contain the date, time and place where the statement is recorded and the time when the interview commenced and when it ended.

If it happens that the officer recording the statement cannot speak the language understood by the suspect then he should make sure that the interpreter is present before the start of the recording the

<sup>13</sup> <https://www.findlaw.com/criminal/criminal-procedure/evidence-the-concept-of-admissibility.html> accessed in October 2024

<sup>14</sup> Section 7(1) of Cap. 20 [R.E 2022]

<sup>15</sup> Section 9 of Cap. 20 [R.E 2022]

<sup>16</sup> Police General Orders No.311 R.E 2021

<sup>17</sup> Section 14(1) of Cap. 20 [R.E 2022]

<sup>18</sup> Section 13 of Cap. 20 [R.E 2022]

<sup>19</sup> Section 18 of Cap. 20 [R.E 2022]

<sup>20</sup> Section 16 of Cap. 20 [R.E 2022]

<sup>21</sup> Section 31(1) of Cap. 20 [R.E 2022]

<sup>22</sup> Section 57 and 58 of Cap. 20 [R.E 2022]

<sup>23</sup> Section 58 of Cap. 20 [R.E 2022]

<sup>24</sup> Section 57 of Cap. 20 [R.E 2022]

<sup>25</sup> Section 50(1) of Cap. 20 [R.E 2022]

<sup>26</sup> Section 53 of Cap. 20 [R.E 2022]



statement. The statement of the interpreter should be recorded as a witness. The statement recorded by the investigator or the officer recording is to be confined to the matters significant to the case, hence the suspect is to be questioned on matters significant in relation to the offences committed in order to get precise and consistent information.

#### 2.4.1 Admissibility of Cautioned Statements

The statement of the accused person to the police in the course of investigation into a crime is relevant and admissible in evidence at his trial. Such statement and indeed all statements by the accused person may be tendered in evidence during the presentation of the case for the prosecution. The Evidence Act is the one that governs the admissibility of statement of an accused person especially when it is confession that an accused person has made to a police officer and it offers that; confession voluntarily made to a police officer by a person accused of an offence may be proved as against that person.<sup>27</sup>

However the onus of proving of that any statement made by an accused person was voluntarily made by him shall lie on the prosecution, that means it was made without being induced by any threat, promise or other prejudice held out by the police officer to whom it was made or by any member of the Police Force or by any other person in authority.<sup>28</sup> The way of proving that the statement was made without any undue influence and was made as per the law then Prosecutor will have to cause the statement made by the accused before the police officer to be tendered in court, the manner of proving the content of the documents in court is also governed by the Evidence Act. The Law states that the contents of documents may be proved either by primary or by documentary evidence.<sup>29</sup>

Generally this means that, the contents of documents may be proved by the production of the document (primary evidence), or by copies or oral accounts of the contents (secondary evidence). Primary evidence is evidence which may be given first<sup>30</sup> which in our case is the cautioned statement. Secondary evidence is evidence which may be given in the absence of the better evidence which the law requires to be given first, when a proper explanation is given of the absence of that better record.<sup>31</sup>

#### 2.4.2 Test of Admissibility

##### Voluntariness

To render a cautioned statement admissible in evidence it must be perfectly voluntary,<sup>32</sup> and there is no doubt that any inducement in the nature of a promise or of a threat held out by a person in authority vitiates a confession. It has long been a positive rule in criminal law that no statement made by an accused person can be used against them in evidence unless the prosecutor can demonstrate that the statement was given voluntarily, meaning it

was not obtained from the accused person out of fear of retaliation or in the hope of an advantage.

In cautioned statement, if the accused person has confessed then that statement is really the best evidence or the strongest against an accused in the determination of his guilt.<sup>33</sup> Therefore, if such a statement is direct, affirmative, and unambiguous and has been shown to have been made willingly, it is an admission of guilt and may even be sufficient to support a finding of guilt of an accused person. The court's first responsibility is to determine whether the statement was made voluntarily when the objection to its admissibility is based on the claim that the accused made it under duress, meaning that he was coerced, threatened, or influenced to make it by someone in a position of authority in order to obtain an advantage or prevent a temporal evil. The court shall proceed to conduct an inquiry within the main trial known as trial-within-trial in order to determine the voluntariness or otherwise of the statement.<sup>34</sup>

From the above, it is clear that where the confession is found to have been made freely and voluntarily and there is no objection to the statement being tendered as part of prosecution material evidence, the court can convict the accused on his statement alone that means a cautioned statement can stand on its own without corroboration.<sup>35</sup> Ultimately, each accused individual is in the greatest position to determine whether or not he committed the alleged act.

#### Trial Within Trial

When the prosecution tries to provide a cautioned statement that was taken from the accused person throughout the course of the inquiry, the accused person and/or his attorney typically oppose to its admission. But it's important to remember that the right time to make this objection is when the statement is being sought as evidence during trial, not later.<sup>36</sup> And in the absence of any objection to the admission of the statement when the prosecution sought to have it admitted, the trial court cannot hold a trial within trial or inquiry suo motu, to test its voluntariness.<sup>37</sup> Where the accused person objects on the ground that it was made involuntarily, or under oppression or that there was a threat or promise, the court has a duty to try the issue then and rule on whether to admit or reject the statement and this is what is called trial within trial.<sup>38</sup> The purpose is therefore to ascertain whether the

<sup>33</sup> *Paulo Maduka and Others v. Republic, Court of Appeal of Tanzania at Dodoma, Criminal Appeal 110 of 2007, (unreported)*

<sup>34</sup> *Samwel Batromeo v. Republic, Court of Appeal of Tanzania at Tabora, Criminal Appeal No. 72 of 2013, (unreported)*

<sup>35</sup> *Hassan Mohamedi Ngoya v. Republic, Court of Appeal of Tanzania at Dodoma, Criminal Appeal No. 134 of 2012, (unreported)*

<sup>36</sup> *Nyerere Nyague v Republic, Court of Appeal of Tanzania at Arusha, Criminal Appeal No.67 of 2010 (unreported), Shihozze Seni And Another v Republic (1992) TLR. 330 and Juma Kaulule v Republic, Criminal Appeal No. 281 of 2006 (unreported)*

<sup>37</sup> *Stephen Jason And Another V R, Court of Appeal of Tanzania, Criminal Appeal No. 79 of 1999 (unreported).*

<sup>38</sup> *Twaha Ally And 5 Others V Republic, Court of Appeal of Tanzania, Criminal Appeal No. 78 of 2004 (unreported)*

<sup>27</sup> Section 27(1) of Cap. 6 [R.E 2022]

<sup>28</sup> Section 27(2) and (3) of Cap. 6 [R.E 2022]

<sup>29</sup> Section 63 of Cap. 6 [R.E 2022]

<sup>30</sup> Section 64 of Cap. 6 [R.E 2022]

<sup>31</sup> Section 65 of Cap. 6 [R.E 2022]

<sup>32</sup> Section 27 of Cap. 6 [R.E 2022]





confessional statement was made voluntarily or not and not to determine whether the statement was ever made.

It must be understood that during the course of trial within a trial, all the rules of criminal proceedings must be followed and applied. Accordingly, at this stage the burden of proof of the voluntariness of a statement of an accused person yet lies on the prosecution. The prosecution shall prove to the court beyond reasonable doubt that the confession (notwithstanding that it may be true) was not obtained in a manner contrary to the requirement of the law.<sup>39</sup> It shall therefore be wrong to hold that since it is the accused that raises the issue that his statement was taken under oppression, then such position must be proved by him. The onus to proof does not shift from the prosecution to the accused at any stage in criminal proceedings. It would be wrong for the court to conduct a trial within trial by calling on the accused to prove the claim of absence of free-will when making the confession sought to be tendered by the prosecution against such an accused.

At the end of trial within trial, the court will now rule either that the statement was voluntary therefore relevant and admissible or that it was extracted through wrongful means and, therefore, inadmissible.

### Compliance with the Procedures

It is a mandatory requirement that all procedures have to be followed when recording a cautioned statement. Reinforcing on the obligatory procedures, the court emphasize that noncompliance with section 57 and 58 of the Criminal Procedure Act not only compromises the integrity of the investigation but also violates the rights of the accused.<sup>40</sup> The validity of cautioned statement hinges on the strict adherence to the provided procedural requirements, thereby reinforcing the necessity for law enforcement officers to conduct investigations with diligence and respect for legal standards.

In essence, any failure to comply with these provisions not only undermines the evidence gathered but may also jeopardize the prosecution case ultimately leading to miscarriage of justice. The court went further as to quickly point out that these elaborate provisions were not superfluously added to the Act, they had a specific purpose.<sup>41</sup> Having been enacted after the inclusion of the basic right of equality before the law, in our constitution they were purposely added as procedural guarantees to this right. For this reason, therefore police officers recording suspects cautioned statements under both sections 57 and 58 of the Act have an unavoidable statutory duty to comply fully with these provisions. They cannot, at the risk of rendering the statement invalid, choose and pick which requirements to comply with and which ones to

<sup>39</sup> *Selemani Hassan v Republic, Court of Appeal of Tanzania, Criminal Appeal No. 364 of 2008 (unreported)*

<sup>40</sup> *Mbuzi Lushona @ Mwangaike and two others v. R, Court of Appeal of Tanzania at Tabora, Criminal Appeal No. 159 of 2022, (unreported)*

<sup>41</sup> *Chamuriho Kirenge @ Chamuriho Julius v. Republic, Court of Appeal of Tanzania at Mwanza, Criminal Appeal No. 597 of 2017, (unreported)*

disregard. The conditions stipulated in these two sections are cumulative and the duty imposed is mandatory.<sup>42</sup>

### Compliance with the Four Hours Rule

The position of law has since been confirmed by statute with the enactment of the Criminal Procedure Act in 1985 (the CPA). Under section 50(1) of the CPA, there are now set up limitation periods for which interviews can be taken. It provides:

*"(1) For the purposes of this Act the period available for interviewing a person who is in restraint in respect of an offence is-*

*(a) subject to paragraph (b) the basic period available for interviewing the person, that is to say, the period of four hours commencing at the time when he was taken under restraint in respect of the offence,*

*(b) if the basic period available for interviewing the period is extended under section 51 the basic period so extended".<sup>43</sup>*

A person is deemed to be taken under restraint when he is arrested in respect of an offence, and that is when the basic period commences. However, if a suspect has been in lawful custody for the commission of an offence for the entire basic interview time, which is four hours, and has not been charged with the offence, and the investigating police officer believes, for a reasonable reason, that the suspect needs to be interviewed further, he may extend the interview for up to eight hours and notify the subject of the interview; or, either before the original period or the extended period expires, he may formally apply to a magistrate to request an additional extension of that time.<sup>44</sup>

Nevertheless, any time a police officer is investigating an offence and refrains from speaking with the accused or requiring them to perform any task related to the investigation of the crime will not be counted towards the allotted time for interviewing a suspect who is in custody for committing a crime.<sup>45</sup> Hence the following situations were taken out of the calculations of the four hours: when the accused is being taken to a police station or another

<sup>42</sup> *Mbuzi Lushona @ Mwangaike and two others v. R, Court of Appeal of Tanzania at Tabora, Criminal Appeal No. 159 of 22, (unreported)*

<sup>43</sup> *Section 50(1), (a)(b) of Cap. 20 [R.E 2022]*

<sup>44</sup> *Section 51(a), (b) of Cap. 20 [R.E 2022]*

<sup>45</sup> *Ngasa Sita Mabundu vs Republic, Court of Appeal of Tanzania, Criminal Appeal No.254 of 2017 (unreported), Anold Loishie @ Leshai vs Republic, Criminal Appeal of Tanzania, Criminal Appeal No.249 of 2017 (unreported), Aliyu Dauda Hassan and others vs Republic, Court of Appeal of Tanzania, Criminal Appeal No.282 of 2019 (unreported), Roland Thomas@ Mwangamba vs Republic, Court of Appeal of Tanzania, Criminal Appeal No. 308 of 2007 (unreported), Ramadhani Mashaka vs. Republic, Court of Appeal of Tanzania, Criminal Appeal No. 311 of 2015 (unreported), Yusufu Masalu@Jiduvi & 3 others vs Republic, Court of Appeal of Tanzania, Criminal Appeal No 163 of 2017 (unreported), Michael Mgowole and Shadrack Mgowole vs Republic, Court of Appeal of Tanzania, Criminal Appeal No 205 of 2017 (unreported), Msafiri Jumanne & 2 others vs Republic, Court of Appeal of Tanzania, Criminal Appeal No. 187 of 2006 (unreported).*



residence for any reason related to the investigation after being arrested.

The four hours may also be skipped if the accused is allowed to organize or try to assemble for the presence of his Attorney. This will allow the investigator or the person interviewing the accused to communicate or try to speak with anyone who is required by Section 54 to be present during interview in connection with the investigation of the crime, as well as anyone who is invited to be present under the Criminal Procedure Act.

Assembling or attempting to assemble for the presence of someone who is required by the Criminal Procedure Act to be present in order to interview the accused, while the accused is acting in connection with the inquiry while awaiting the arrival of a person as required by the Criminal Procedure Act, or while the accused is speaking with his advocate, may also be excluded from the time.<sup>46</sup>

From all the observation above concerning the available time for interviewing the suspect, it leads to the conclusion that once the cautioned statement is said to be taken out of the prescribed time which is four hours from the time of the arrest then it will be considered to have taken contrary to section 50 (i) (a) of the Criminal Procedure Act. It is now settled that statements taken without adhering to the procedure laid down in sections 50 to 51 of the Criminal Procedure Act are inadmissible<sup>47</sup> and if the statement was admitted during trial while it was taken out of time, it follows therefore, that the cautioned statement was not properly admitted and it should therefore be expunged from the record.<sup>48</sup>

## 2.5 Conditions/ Rules on Admissibility of Cautioned Statement

There are generally standard concepts and criteria that law enforcement agents and investigators must follow, while the regulations governing the taking of cautioned statements vary depending on the country and legal system. The following general guidelines and factors generally govern the taking of cautioned statements:

First, the statement must be recorded within four (4) hours from the time when the accused is being placed under arrest, or when the arresting officer first placed him under custody,<sup>49</sup> this is what is called the Four Hours Rule. In situations where a cautioned statement was not recorded within the allotted time, the investigating officer should document the reason for the delay or omission.

Second, the suspect should be cautioned and informed of his rights, that he is not obliged to answer any question asked other than a question seeking particulars of his name and address. Additionally, the suspect should have the freedom to contact any lawyer, friend,

or relative he chooses, but if the suspect is a minor, a parent, guardian, relative, or social welfare worker should be present. However, it is prohibited for anyone other than the person the suspect wanted to attend. Anyone present when the statement was being taken must complete each sheet and promptly record their statement as a witness.<sup>50</sup>

The suspect should be given time to read the statement at the conclusion, or if he consents, the officer taking the statement should read it to him. The accused should then sign the document under his hand, certifying what has been written and, if he so chooses, making any necessary corrections or modifications. Following certification, the suspect must sign the certification and each page of the statement that was recorded.<sup>51</sup>

## 2.6 Circumstances that Render Cautioned Statements Inadmissible

When it comes to a criminal case and the submission of a cautioned statement by the accused to the police, the courts are well aware of the mindset of both the accused and the defense attorney. Typically, they object to a cautioned statement's admissibility. If nothing else, to exercise their constitutional right to a fair trial and in accordance with accepted legal norms; the court must follow the law and decide admissibility regardless of the merits of the objection.<sup>52</sup>

Given the prior requirements for cautioned statement to be admitted in criminal trial mostly when the suspect has confessed to have committed the crime, it is important to take into account the situations that make the statement inadmissible, as specified in Section 27 of the Evidence Act<sup>53</sup> to include inducement, threat or promise and by persons in authority.

A statement obtained through inducement, threat or promise and by a person in authority will not be allowed to be used as evidence. The term "inducement" describes a means of persuading someone to make a remark, which need not constitute an admission of guilt. Typically, inducement is interpreted as a threat of disadvantage or a promise of benefit. As a result, whether or not a remark was induced may also depend on the circumstances surrounding its making. Words and actions that reasonably imply a promise or threat can be used to elicit such behavior.<sup>54</sup> A cautioned statement which fails to meet those legal requirements is involuntary and therefore, inadmissible in evidence. The absence of inducement, threat of violence or promise, presupposes a state of mind capable of making rational choice or otherwise. The promise of some advantage held out by a person in authority in relation to a

<sup>50</sup> Cochran Siegel & Chambliss William (2020). *The criminal justice system: Structures, processes, and outcomes 4th Ed.* Upper Saddle River, NJ: Pearson

<sup>51</sup> Section 57(4) of Cap. 20 [R.E 2022]

<sup>52</sup> Marcus K.A, (2019), *A Criminal Procedure Jurisprudence: Law and Practice*, Uganda Publisher.

<sup>53</sup> Cap. 6 [R.E 2022]

<sup>54</sup> Bohn R. M and Haley, K. N.(2021). *Introduction to Criminal Justice*, 10th Edn. McGraw Hill

<sup>46</sup> Section 50(2), (a), (b), (c), (d) of Cap. 20 [R.E 2022]

<sup>47</sup> Janta Joseph Komba & 3 Others v. Republic. Court of Appeal of Tanzania, Criminal Appeal No. 95 of 2006 (unreported)

<sup>48</sup> Joseph Mkumbwa and Samson Mwakagenda v. Republic, Court of Appeal of Tanzania at Mbeya, Criminal Appeal No. 94 of 2007, (unreported)

<sup>49</sup> Section 50(1), (b) of Cap. 20 [R.E 2022]



prosecution to a person suspected of having committed a criminal offence. At common law a statement made after an inducement is inadmissible. It may now render the statement unreliable, and therefore inadmissible.<sup>55</sup>

### 3.0 Conclusion

In conclusion, the findings of this study underscore the significance of the statement made by the accused during a police inquiry, particularly when the accused has confessed to committing the crime. As outlined in Section 27 of the Evidence Act, such a statement is considered relevant and admissible as evidence during trial. However, the study also reveals the troubling and often controversial practices employed by the police to coerce the accused into making a statement. This highlights the critical issue of how law enforcement may, at times, use improper tactics to extract confessions, raising concerns about the fairness and integrity of the investigative process.

Furthermore, the research examines the role of the courts in determining whether or not to admit police-obtained statements, particularly when those statements have been elicited in violation of legal guidelines and regulations governing the collection of suspect testimony. It is clear that the courts play a crucial role in ensuring that evidence obtained through improper means is not allowed to taint the judicial process. The rules and guidelines governing the questioning of suspects are designed to protect the rights of the accused and to ensure that any statement given is done so voluntarily, without undue pressure or manipulation from law enforcement agencies.

The article strongly emphasizes that any statement made by an accused person must be given freely and voluntarily, without being influenced by fear, promises, threats, or inducements. If a statement is obtained under such circumstances, it will be deemed involuntary and, therefore, inadmissible in court. This principle serves as a safeguard against coercion and ensures that the judicial system upholds the fairness and justice owed to every individual, protecting the integrity of the criminal justice process. Ultimately, the study advocates for greater vigilance and adherence to legal safeguards to prevent the abuse of power in the collection of evidence and to guarantee the rights of suspects are respected throughout the criminal investigation and trial process.

<sup>55</sup>

<https://www.oxfordreference.com/display/10.1093/oi/authority.2011080310002147> accessed in October 2024

