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ASSESSMENT OF THE LAWS GOVERNING APPLICATION OF DEFENCE OF ALIBI IN THE PRIMARY COURTS IN TANZANIA: A CASE STUDY OF MWANZA CITY

By

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Abstract

The defence of alibi is an important safeguard in criminal proceedings because it enables an accused person to challenge an allegation of participation in an offence by demonstrating that he or she was elsewhere when the alleged offence was committed. This article assesses the laws governing the application of the defence of alibi in Primary Courts in Tanzania, with particular focus on Mwanza City. The study examines the legal framework governing alibi, the extent to which the defence is applicable in Primary Courts, and the legal and practical challenges affecting its application. The study adopted a qualitative approach combining doctrinal and non-doctrinal methods. Data were obtained through documentary review and interviews, while purposive sampling was used to obtain relevant participants. The findings indicate that although the defence of alibi is legally available in Primary Court proceedings through general evidentiary principles and judicial practice, the existing framework does not provide sufficiently comprehensive and clear procedures governing its application. The study further identifies inadequate police investigation and verification, limited legal representation and legal awareness, inconsistency in judicial evaluation of alibi evidence, inadequate professional training, and delays in verification as significant challenges. These weaknesses may affect the proper consideration of genuine alibi claims and the fairness of criminal proceedings. The article concludes that there is a need for clearer statutory and procedural guidance on the raising, investigation, presentation and determination of alibi in Primary Courts. It recommends legislative clarification, improved police investigation and verification, strengthened access to legal representation, and enhanced judicial training to ensure consistent and fair application of the defence.

Keywords: Alibi, Criminal Justice, Primary Courts, Criminal Procedure, Fair Trial, Tanzania.

INTRODUCTION

The defence of alibi occupies an important position in criminal proceedings because it provides an accused person with a means of disputing his or her alleged presence at the scene of an offence. The defence arises where the accused contends that, at the material time, he or she was at another place and could not therefore have participated in the commission of the alleged offence. Its significance is closely connected with the presumption of innocence and the prosecution's obligation to establish the guilt of the accused beyond reasonable doubt. In Tanzania, the legal treatment of alibi is derived from constitutional guarantees, statutory provisions and judicial interpretation. Article 13(6) of the

Constitution of the United Republic of Tanzania, 1977 protects fundamental rights of persons facing criminal proceedings, while section 200 of the Criminal Procedure Act, Cap. 20 R.E. 2023 provides for notice where an accused person intends to rely upon an alibi.¹

The legal significance of alibi must also be understood within the broader framework of fair trial guarantees. International human rights standards recognise the right of an accused person to adequate procedural safeguards and facilities necessary for the preparation and presentation of a defence. Article 14 of the International Covenant on Civil and Political Rights, 1966 guarantees fundamental safeguards in criminal proceedings, while



Article 11(1) of the Universal Declaration of Human Rights, 1948 affirms the presumption of innocence. These guarantees require criminal procedures to be applied in a manner that preserves, rather than unnecessarily restricts, an accused person's opportunity to present a defence.ⁱⁱ

The application of these principles presents a particular legal concern in Primary Courts. Section 200 of the Criminal Procedure Act contains provisions relating to notice of an alibi, whereas criminal proceedings before Primary Courts are conducted principally under the Primary Courts Criminal Procedure Code contained in the Third Schedule to the Magistrates' Courts Act, Cap. 11 R.E. 2023. The interaction between these provisions raises questions regarding the procedural basis upon which an alibi is to be raised, investigated and determined in Primary Court proceedings. The concern is more significant where an accused person is unrepresented and may have limited knowledge of the procedural requirements governing criminal proceedings.ⁱⁱⁱ

The determination of an alibi also requires proper consideration of the relationship between the defence and the prosecution's burden of proof. Raising an alibi does not, by itself, transfer the legal burden of proving the criminal charge to the accused. The prosecution remains under a duty to establish the essential elements of the offence beyond reasonable doubt, while the court is required to assess the alibi alongside the prosecution evidence. Tanzanian and comparative judicial decisions have recognized the importance of properly evaluating alibi evidence where it raises a question concerning the accused person's presence or participation in the alleged offence. Consequently, the effectiveness of the defence depends not merely upon its formal availability but also upon the manner in which it is investigated and evaluated during criminal proceedings.^{iv}

The legal and practical position therefore warrants examination, particularly at the Primary Court level. The absence of sufficiently clear procedural guidance may create uncertainty regarding the raising, disclosure, investigation and determination of an alibi. Such uncertainty may affect the accused person's ability to present a genuine defence and may also complicate the work of police investigators, prosecutors and judicial officers in assessing the credibility and evidential value of an alibi. The study underlying this article, conducted in Mwanza City, identified inadequate police investigation and verification, limited legal representation and legal awareness, inconsistency in judicial evaluation, limited professional training and deficiencies in verification as challenges affecting the effective application of the defence.^v

This article therefore examines the laws governing the application of the defence of alibi in Primary Courts in Tanzania, with Mwanza City as the case study. It analyses the legal basis of the defence, examines its application within Primary Court proceedings, identifies the legal and practical challenges affecting its effectiveness, and considers reforms necessary to provide a clearer and more consistent framework for its application. The analysis seeks to establish whether the existing framework adequately balances the need for effective criminal investigation

and adjudication with the accused person's right to a fair opportunity to present a genuine defence.

INTERNATIONAL, REGIONAL AND DOMESTIC LEGAL CONTEXT

The legal protection of an accused person who relies on an alibi is not confined to Tanzanian law. International human rights standards recognise fair trial guarantees that require an accused person to have a meaningful opportunity to present and challenge evidence in criminal proceedings. Article 6 of the European Convention on Human Rights, for example, protects the right to a fair hearing, while European human rights jurisprudence emphasizes effective participation in criminal proceedings and the need for procedural rules to respect the accused person's ability to present a defence. In *Mirilashvili v Russia*, the European Court of Human Rights considered the importance of effective participation and procedural fairness in criminal proceedings.^{vi}

Within the African human rights system, Article 7 of the African Charter on Human and Peoples' Rights protects the right to have a case heard and includes the right to defence. The relevance of this protection to alibi evidence is particularly demonstrated by *Mohamed Abubakari v United Republic of Tanzania*, where the African Court on Human and Peoples' Rights considered the failure of domestic courts to adequately examine the applicant's alibi. The decision illustrates that the right to defence requires courts to engage with a material defence raised by an accused person rather than disregarding it without proper consideration. The significance of this principle lies in ensuring that procedural requirements do not prevent courts from examining evidence that may have a bearing on the accused person's criminal responsibility.^{vii}

The East African jurisprudence similarly demonstrates the importance of preserving the prosecution's burden of proof when an alibi is raised. Courts in Kenya and Uganda have recognized that an accused person may rely on an alibi and that the existence of an alibi does not, by itself, transfer the burden of proving guilt to the accused. In *Kiarie v Republic*, the Kenyan High Court addressed the treatment of alibi evidence, while *Sekitoleko v Uganda* affirmed the principle that an accused person does not bear the burden of establishing the truth of an alibi.^{viii} The same approach is reflected in *Said v Republic*, where the court emphasised the importance of investigation and consideration of an alibi raised by an accused person. These authorities demonstrate a consistent regional concern that the evaluation of alibi should remain connected to the prosecution's obligation to prove the case.^{ix}

In Tanzania, criminal procedure and evidence are regulated principally by the Criminal Procedure Act, Cap. 20 R.E. 2023 and the Evidence Act, Cap. 6 R.E. 2023. Proceedings before Primary Courts, however, operate under the Primary Courts Criminal Procedure Code contained in the Third Schedule to the Magistrates' Courts Act, Cap. 11 R.E. 2023. Section 200 of the Criminal Procedure Act requires an accused person who intends to

rely on an alibi to give notice before trial. The purpose of such a requirement is to provide an opportunity for the prosecution to investigate the alleged whereabouts of the accused person.^x The legal concern arises from the absence of sufficiently detailed and express procedures specifically regulating the application of alibi within Primary Court proceedings. While the defence is recognized within the broader criminal justice framework and has been considered in judicial decisions, the procedural framework applicable at the Primary Court level does not provide comparable detail on matters such as the manner of raising the defence, its investigation, the consequences of delayed disclosure and the manner in which the court should evaluate the evidence. This creates a need to examine whether the existing framework provides adequate protection for the accused person while also enabling the prosecution to investigate and challenge potentially fabricated alibi claims.

The issue is particularly significant because Primary Courts are courts of first instance for many criminal matters. The effectiveness of the right to rely on an alibi at this level therefore depends not only on the existence of general legal principles but also on their practical application by judicial officers, police investigators and prosecutors. Where procedural uncertainty is combined with limited legal representation and inadequate investigation, the risk arises that a relevant alibi may not receive proper consideration. The resulting concern is not that the availability of alibi itself produces injustice, but that unclear or inconsistent procedures governing its application may affect the fair determination of criminal cases.^{xi}

APPLICATION OF ALIBI IN PRIMARY COURTS

The study found that the defence of alibi is legally available in Primary Courts in Tanzania, although its application is not supported by a comprehensive statutory procedure specifically regulating the defence. The legal basis is derived from the general principles governing criminal proceedings, the Primary Courts Criminal Procedure Code contained in the Third Schedule to the Magistrates' Courts Act, Cap. 11 R.E. 2023, and the Magistrates Courts (Rules of Evidence in Primary Courts) Regulations. The absence of a specific provision on alibi in the Primary Courts Criminal Procedure Code therefore does not mean that an accused person is precluded from raising the defence. Rather, the defence operates through the general principles of criminal evidence and judicial interpretation.

This position is reflected in *Rashidi Ally v Republic*, where the Court recognized that an accused person does not bear the burden of proving an alibi and that the defence is sufficient where it raises reasonable doubt in the prosecution case. The same approach is reflected in *Keroso Mnunguli v Athuman Masini and Sebastian Leonard*, where the court recognised that an alibi may be considered even where the accused has not produced independent evidence in support of it. These decisions demonstrate that the operation of alibi in Tanzania is substantially shaped by judicial

principles rather than by an express statutory procedure applicable to Primary Courts.^{xii}

The study further established that the practical application of alibi depends on the circumstances of each case and on the ability of the court to evaluate the evidence concerning the accused person's whereabouts at the material time. Such evidence may be presented through witnesses, documents or other relevant evidence capable of supporting the accused's account. The Rules of Evidence in Primary Courts recognise oral, documentary and real evidence and require evidence to be relevant to a fact in issue or to a fact from which a fact in issue may be inferred. Accordingly, an accused person may raise an alibi through any legally admissible evidence capable of demonstrating that he or she was elsewhere when the offence was committed.^{xiii}

The study therefore found that alibi is legally recognized and practically applicable in Primary Courts, but its effectiveness is affected by the absence of a comprehensive statutory procedure. This creates uncertainty concerning how the defence should be raised, investigated, recorded and evaluated. The problem is particularly significant for accused persons who appear without legal representation because they may have difficulty identifying relevant witnesses or other evidence capable of corroborating their whereabouts.

EFFECT OF ALIBI ON THE DETERMINATION OF CRIMINAL LIABILITY

The effect of an alibi on criminal liability is closely connected with the burden and standard of proof. In criminal proceedings before Primary Courts, the complainant bears the burden of proving the facts constituting the offence. Rule 1(1) of the Magistrates' Courts (Rules of Evidence in Primary Courts) Regulations places that responsibility upon the complainant, while Rule 5(1) requires the court to be satisfied beyond reasonable doubt that the accused committed the offence. Where the facts in issue have not been proved to that standard, the court is required to acquit the accused.^{xiv}

The significance of an alibi is therefore not that it places a separate burden upon the accused to establish innocence. Its significance is that it may create doubt concerning an essential aspect of the prosecution case, particularly the accused person's presence, identity or participation in the commission of the offence. The study found that the prosecution retains the ultimate burden of proving guilt, and that burden does not shift merely because an accused person raises an alibi.

This position has also been affirmed judicially. In *Rashidi Ally v Republic*, the Court emphasized that the accused is not required to prove the alibi and that it is sufficient if the defence raises reasonable doubt. The Court of Appeal has similarly maintained that there is no burden upon an accused person who raises an alibi to prove the truth of that defence. The consequence is that a Primary Court should not reject an alibi merely because the accused has failed to call an independent witness or produce

documentary evidence. The proper question is whether, considering the whole evidence, the prosecution has proved beyond reasonable doubt that the accused was responsible for the offence.^{xv}

The study identified a particular risk where the failure of an accused person to produce independent evidence is treated as a reason for rejecting the alibi. Such an approach may effectively reverse the burden of proof by requiring the accused to prove an alternative account of his or her whereabouts. The danger is especially pronounced where the accused is unrepresented or where the evidence necessary to verify the alibi was within the reach of investigators rather than the accused. The proper approach is therefore to evaluate the alibi together with the prosecution evidence. Where the prosecution evidence, considered as a whole, establishes beyond reasonable doubt that the accused committed the offence, the existence of an alibi does not automatically result in acquittal. However, where the alibi creates a reasonable doubt which the prosecution fails to eliminate, the accused should receive the benefit of that doubt. This approach preserves the presumption of innocence and prevents conviction merely because the accused has failed to prove an alternative version of events.

The findings consequently demonstrate that the legal effect of alibi is closely tied to the quality of the prosecution case rather than to an independent burden imposed upon the accused. The central question remains whether the prosecution has discharged its burden beyond reasonable doubt after the alibi has been properly considered. Failure to apply this principle may undermine the accused person's right to a fair hearing and may increase the risk of wrongful conviction.

LEGAL AND PRACTICAL CHALLENGES TO THE APPLICATION OF ALIBI

The study found that the main challenges are inadequate police investigation, inadequate legal representation, inconsistent judicial approaches, limited legal guidance and difficulties in evaluating supporting evidence. These challenges do not make the defence of alibi legally unavailable, but they may make it ineffective in practice.

Inadequate Police Investigation

The effectiveness of an alibi depends partly on proper investigation of the accused person's alleged whereabouts. Where investigators fail to verify the alibi, relevant witnesses or documentary and electronic evidence may not be identified and presented before the court. This creates a risk that an accused person will be expected to establish facts which should have been investigated during the criminal investigation. The prosecution nevertheless retains the burden of proving guilt beyond reasonable doubt. Therefore, failure by the police to investigate an alibi should not operate against the accused merely because supporting evidence was not produced. The court should consider whether the prosecution case, including the evidence concerning the accused's whereabouts, is sufficient to meet the required standard of proof.

Inadequate Legal Representation

The study also found that inadequate legal representation affects the effective application of alibi. An accused person may have difficulty identifying witnesses, presenting documentary or electronic evidence, challenging identification evidence and explaining how the alibi creates reasonable doubt. The problem is more serious where an accused person is unrepresented. A genuine alibi may therefore receive inadequate consideration not because it lacks legal relevance, but because the accused is unable to present the defence effectively. Proper legal assistance is consequently important to ensure that the formal recognition of alibi is translated into an effective defence.

Inconsistency in Judicial Application

Inconsistent approaches among judicial officers were also identified as a challenge. The problem arises where materially similar alibi evidence is treated differently or where an accused person is effectively required to provide independent corroboration as a condition for accepting the defence. Such an approach may improperly increase the evidential burden placed upon the accused. The proper approach is to determine whether the prosecution has proved its case beyond reasonable doubt after considering the alibi and the evidence as a whole. An alibi should not be rejected solely because it lacks independent corroboration where the law does not make such corroboration a mandatory requirement.

CONCLUSION AND RECOMMENDATIONS

Conclusion

The study concludes that the defence of alibi is legally available in Primary Courts in Tanzania, although there is no comprehensive statutory procedure specifically regulating its application. Its recognition is derived from the general principles of criminal evidence, the procedural framework governing Primary Courts and judicial decisions. The absence of detailed statutory guidance creates uncertainty regarding how an alibi should be raised, investigated, evaluated and determined. The study further concludes that the availability of alibi does not itself lead to injustice. Injustice may arise from its improper application, particularly where the defence is inadequately investigated, the accused lacks effective legal assistance, or the court places an improper burden upon the accused to prove the alibi. The prosecution remains responsible for proving guilt beyond reasonable doubt, and an alibi need only raise reasonable doubt in the prosecution case.

The major challenges identified include inadequate police investigation and verification, inadequate legal representation, limited legal awareness, inconsistent judicial approaches and the absence of clear procedural guidance. These challenges may weaken the practical effectiveness of an alibi even though the defence is legally recognized.

Recommendations

The study recommends the adoption of clear statutory or regulatory provisions governing the defence of alibi in Primary Courts. Such provisions should clarify how an alibi may be raised, recorded,

investigated and evaluated and should expressly recognise the continuing burden of proof upon the prosecution.

The Judiciary should strengthen training for Primary Court magistrates on the treatment of alibi evidence, particularly the principles of presumption of innocence, burden of proof and reasonable doubt. Courts should also provide clear reasons where a material alibi is rejected.

Police authorities should strengthen procedures for investigating and verifying alibi claims. Investigators should examine available

witnesses, documentary records and electronic evidence capable of confirming or disproving the accused person's alleged whereabouts.

Finally, access to legal assistance and public awareness concerning criminal defence rights should be strengthened. This would enable accused persons, particularly those appearing before Primary Courts without legal representation, to understand and effectively exercise the defence of alibi.

END NOTES

ⁱ Constitution of the United Republic of Tanzania, 1977, Article 13(6), Criminal Procedure Act, Cap. 20 R.E. 2023, Section 200.

ⁱⁱ Universal Declaration of Human Rights, 1948, Article. 11(1); International Covenant on Civil and Political Rights, 1966, Article. 14; United Nations Human Rights Committee, General Comment No. 32: Article 14: Right to Equality before Courts and Tribunals and to a Fair Trial, UN Doc CCPR/C/GC/32 (23 August 2007), paras. 30 and 39.

ⁱⁱⁱ Magistrates' Courts Act, Cap. 11 R.E. 2023, Third Schedule; Magistrates Courts (Rules of Evidence in Primary Courts) Regulations, G.N. No. 143 of 2026.

^{iv} Rashidi Ally v Republic [1987] TLR 97; Said v Republic [1963] EA 6; Sekitoleko v Uganda [1967] EA 531; ARCHBOLD, (2024), Archbold: Criminal Pleading, Evidence and Practice, London, Sweet & Maxwell, pp. 1580-1588.

^v ASHWORTH, Andrew (2023), Principles of Criminal Law, 10th ed., Oxford, Oxford University Press, pp. 158-164.

^{vi} European Convention on Human Rights, 1950, art. 6; Mirilashvili v Russia, Application No. 6293/04, 2008.

^{vii} African Charter on Human and Peoples Rights, 1981, Article 7, Mohamed Abubakari v United Republic of Tanzania, Application No. 007/2013.

^{viii} Kiarie v Republic [1984] KLR 739; Sekitoleko v Uganda [1967] EA 531.

^{ix} Said v Republic [1963] EA 6; Uganda v Sebyala & Others [1969] EA 204.

^x Criminal Procedure Act, Cap. 20 R.E. 2023, Section. 200; Magistrates' Courts Act, Cap. 11 R.E. 2023, Third Schedule.

^{xi} Ibid.

^{xii} Rashidi Ally v Republic [1987] TLR 97; Keroso Mnunguli v Athuman Masini and Sebastian Leonard, PC Criminal Appeal No. 3 of 2020.

^{xiii} Magistrates' Courts (Rules of Evidence in Primary Courts) Regulations, G.N. No. 143 of 2026, Rules 8 and 9

^{xiv} Ibid, Rules 1(1) and 5(1)-(2).

^{xv} Richard Otieno Gullo v Republic [2021] TZCA 120.