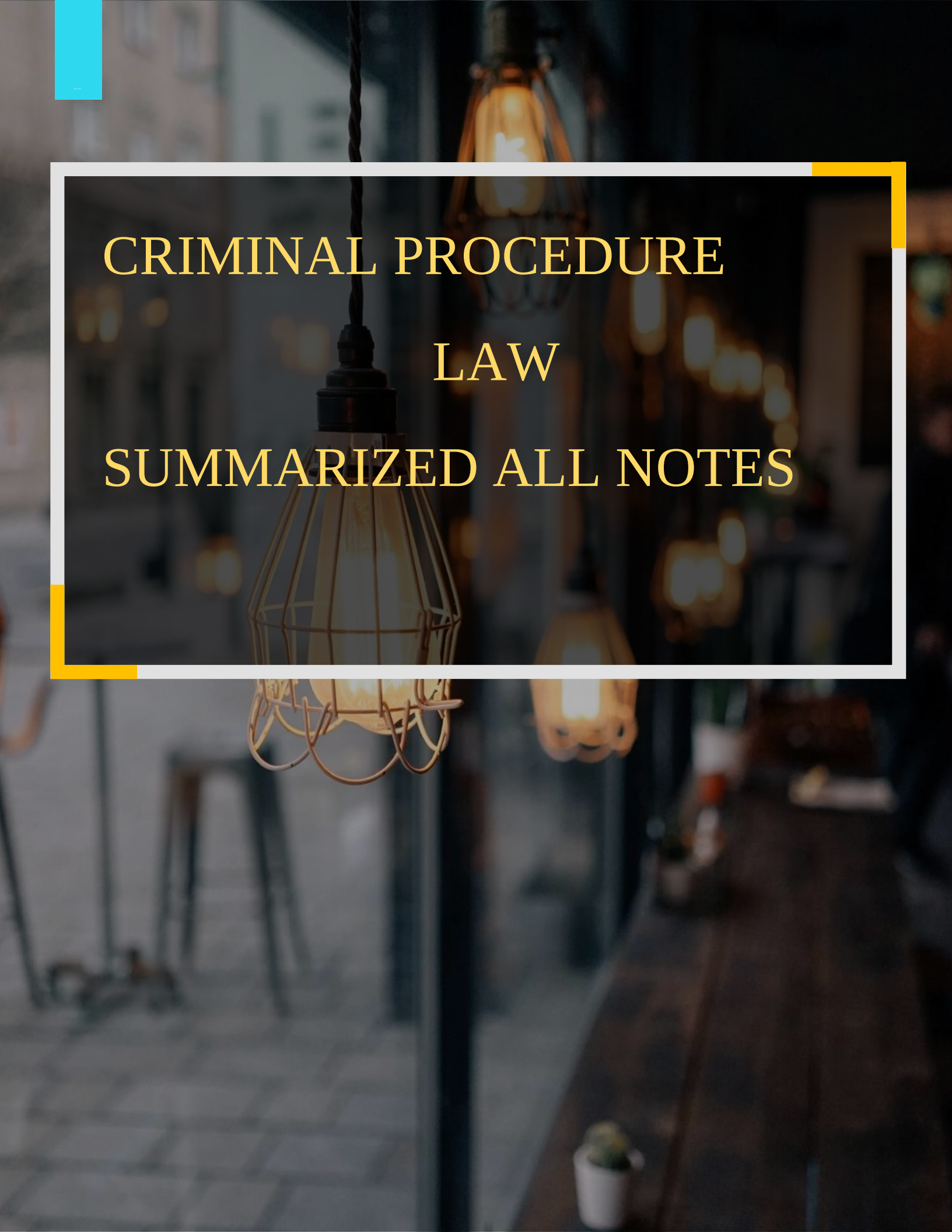


The background of the entire page is a blurred photograph of a cafe or restaurant interior. Several warm-toned, cage-style pendant lamps hang from the ceiling. In the foreground, a dark wooden table is partially visible, with a small potted plant on it. The overall atmosphere is cozy and modern.

CRIMINAL PROCEDURE

LAW

SUMMARIZED ALL NOTES

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CRIMINAL PROCEDURE LAW

What is criminal procedure?

Criminal procedure is the way in which substantive law is applied. It is the way upon which the prosecution conducts its case, also the way in which the courts handle criminal matters that are within their jurisdiction. It is also the modality upon which criminal justice is put into effect.

Criminal procedure is about the way the state and its law enforcement organs are supposed to handle individuals suspected or accused of committing crimes with a view of establishing their guilt or innocence, through established courts of law. It is about rule of law, rule of law do not allow anybody to take the law upon his own hands. The need to adhere to due process was stated in **Joseph Masunzu v. R Cr. App. No.3 of 1991, (HC), (TB), at p.3.**

“...we cannot peacefully make our journey through life, without law telling us the right direction to follow, and sometimes even the time to follow and when to start our journey and through which route”

In **Kamundi v. R (1973) EA 540**. In this case it was held that the whole purpose and intention of the criminal procedure [Code] is to lay down provisions and procedure to see that justice is done.

➤ Laws concerning crimes are divided into (2) two branches:

1. **Substantive laws** are those which create and define offences and offer penalty or punishment to the offenders E.g. Penal Code, Cap. 16
2. **Adjective laws or Procedural laws** are those which concern with proof and procedure. They concern such matters as to how a case is to be framed, in what court it shall be tried, when is to be tried. They govern the rights of parties before, during and after the actual hearing and the role of the magistrate and police officers and witnesses in relation to the trial.

The Importance of Criminal Procedure

Criminal procedure is the procedure, which is used, in criminal cases as a means by which the public and the accused person can obtain their rights granted by law.

- a) It shows the duties and rights of both the state and the accused person when dealing with criminal offences.
- b) It strikes a balance between an individual's liberties versus public interest. An individual's liberty is safeguarded when proper rules of finding the truth are followed so that one cannot be deprived his freedom without justifiable cause.
- c) Every person is presumed to be innocent until proved guilty, thus has the right to enjoy his freedom of movement unless law curtails it. This freedom is curtailed by arrest when an individual is suspected to have committed an offence. Thus it is important for police to have a fair knowledge of the laws governing arrest, and the use of force in effecting arrest. In addition, the officer has to know the laws concerning search of person and property. Furthermore the officer must know the rules of instituting criminal proceedings and the procedures of conducting such proceedings. This is important since criminal procedure deals with criminal trials, duties and rights of both, the State and an individual from the time one is arrested to the time the matter is final disposed off, i.e.; from arrest to judgment or withdrawal.

It is therefore our responsibility to know, adhere and to implement the law of criminal procedure so as to be able to help in the administration of justice in our various offices.

Sources of Criminal Procedure

I. The constitution of united republic of Tanzania

Constitution is any document or scheme which establishes the country's government, defines the powers and limits of the three arms of the state namely the parliament, the judiciary and the executive and the necessary checks and balances in the manner the three arms are supposed to function.

It also defines the relationship between the state and its citizens in terms of rights and obligations. The Constitution is a fundamental law of any country where it is available.

How the Constitution does become the source of criminal procedure?

-  Every law of the land, be it written or otherwise, must comply with the provisions of the Constitution
-  No criminal procedure is valid if it violates any of the provisions contained in the Constitution.

Article 13 (3) of the Constitution provides that civil rights. Obligations and interests of every person and of the society shall be protected and determined by the competent courts of law and other state agencies established in that behalf by or under the law.

Article 13 (4) provides that no person shall be treated in a discriminatory manner by any person acting by virtue of any law or in the discharge of the functions of any state office or the party, and its organs.

Therefore, if there is any criminal procedure in contravention of the right to fair hearing, for example through established courts of law that procedure is illegal.

The Constitution also incorporates the fundamental rule of criminal justice and that is "every person is presumed to be innocent until the contrary is proved beyond reasonable doubts. (Art 13 (6) (b)).

Article 13 (6) (c) provides that no person is to be punished for non-existent offences.

II. Criminal Procedure Act, Cap.20

This is the main source of criminal procedure, which is more detailed and exact. Its contents fall into two categories:

- a) It contain mandatory provisions for those involved in criminal trials as to what shall be done in certain circumstances, hence if these provisions are not adhered to then the trial become a nullity.
- b) Those provisions, which are discretionary as to what action, may be taken. These provisions may permit a magistrate to act within certain defined limits. E.g. the power to sentence

III. The Legislations

Those pieces of legislation enacted by or under the authority of the parliament. Those enacted by the parliament are known as “principal legislations.”

For example,

- ✓ Criminal Procedure Act,
- ✓ Economic and Organized Crimes Control Act,
- ✓ Minimum Sentences Act etc.

Those statutes which are made under the authority of the parliament are known as Subsidiary legislation”. They are enacted by executives, ministries, commissioners, principal secretaries under a specific authority given to them to do so by the principal statutes.

For example,

- ✓ The Habeas Corpus Rules, GN No. 150 made under S. 348 of CPA.
- ✓ Accelerated Trial and Disposal of Cases Rules, made under s. 192 etc.

Section 4 (1) of CPA provides that all offences under the Penal Code shall be inquired into, tried and otherwise dealt with according to the provision of this Act.

Section 4 (2) of CPA provides that all offences under any other law shall be inquired into, tried and otherwise dealt with according to the provisions of this Act, except where that other law provides differently for the regulation of the manner or place of investigation into, trial or dealing in any other way with those offences.

There are other enactments, which are relevant to the effect of criminal trials, these include;

- ✓ The Magistrate’s Court Act, Cap.11
- ✓ The Minimum Sentence Act, Cap.90
- ✓ The National Security Act, Cap. 47

- ✓ The Economic and Organized Crime Control Act, Cap.200

IV. International Law

The world is slightly becoming homogenous, thus the laws dealing with; piracy genocides, money laundering and laws dealing with extradition. NB: These laws are not universally applicable; the country has to sign a treaty.

This is a sum total of norms accepted by international community to regulate relations amongst states vis a vis its subject. It is also an interesting source of criminal procedure especially in this era of human rights promotion and protection. There are a number of Conventions which have direct bearing to the administration of justice.

For example,

- ✓ Convention against Torture and other Cruel Inhuman or degrading treatment or Punishment, 1984.
- ✓ Resolution on Principles of the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Execution, 1989.
- ✓ Convention on the Rights of the Child, 1990 to mention but few.

V. Case laws or Precedents

The subordinate courts are bound by the decisions of the superior courts under the doctrine of judicial precedent; these decisions are of two kinds:

- a) Those, which affect the interpretation of the CPA.
- b) Those, which affect matters relating to criminal procedure which are not contained in the CPA.

There are judgments or decisions of a court of law cited as authorities for deciding similar sets of facts because of the legal principle embodied in them.

Re Hallett (1880) 13 Ch. D. 969. It was held inter alia that:

“Only use of authorities or decided cases is the establishment of some principle which the judge can follow out in deciding the case before him. Courts are therefore expected to be bound by their previous decisions as guidance for deciding matters at issue.”

VI. Bilateral agreements / Treaties

These are sources of criminal procedure; most of them are actually regional with a few exceptions. Under the provision of the Mutual Assistance in Criminal Matters Act, the government of Tanzania (through Attorney general) may enter into agreements with foreign countries, which have reciprocated the provision of the Act, for matters relating but not limited to:

- a. Obtaining of evidence, documents or other articles
- b. Location and identification of witnesses
- c. Execution of request to search and seizure
- d. Assistance in investigation
- e. Execution of courts orders
- f. Service of documents

COURT SYSTEM

In Tanzania we have two sets of laws that create the court system. On one hand we have the constitution of the United Republic of Tanzania, which create the Court of Appeal of Tanzania and there are other statutes that create courts to deal with subordinate courts and other courts to deal with specific offences or specific type of persons.

1. The Court of Appeal of Tanzania

The court is established under Art.117 of the Constitution, Cap. 2. It was established in 1979 after the collapse of the East Africa Community. The C.A.T. is empowered with:

- a) Jurisdiction to hear appeals from the High Court and subordinate court with extended jurisdiction.
- b) Jurisdiction to revise the decision of the above said courts as per Appellate Jurisdiction Act 1979 as amended in 1994. The C.A.T. has no original jurisdiction. The C.A.T. is the highest and final court of appeal in every case except:
 - i. It cannot determine cases involving Islamic matters from Kadhi's court, as per s.98 (2) (a) of Constitution of Zanzibar.
 - ii. It cannot hear and determine cases involving the Government of Tanzania and Zanzibar per Art.117 (2) C.U.R.T. Such cases are reserved for the Special Constitution Court per Art.125 C.U.R.T.

❖ Jurisdiction

- ✓ **Territorial** The Court of Appeal has jurisdiction in both the Tanzania mainland and Zanzibar. However, the jurisdiction of the Court of Appeal in respect of matters originating from Zanzibar is somehow limited.

The Court has no jurisdiction to hear appeals from the High Court of Zanzibar which originated from the Kadhi's Courts in Zanzibar. Also it has no jurisdiction on matters which involved the interpretation of the Constitution of Zanzibar. These two matters, and any other matter which the Zanzibar House of Representatives may from time to time specify, end with the High Court of Zanzibar.

- ✓ **Appellate** It has jurisdiction to hear appeals from the Tanzanian mainland High Court, the subordinate Courts exercising extended jurisdiction (s. 1 Appellate Jurisdiction Act of 1979 as amended in 1994) power and those from the High Court of Zanzibar. However a case which originated in the Primary Court in Tanzania Mainland, cannot automatically reach the Court of Appeal as the same will have exhausted the two levels of appeal at the High Court level. An appeal on a case originating from a Primary Court can only reach the Court of Appeal where the High Court certifies that the case involves a crucial point of law deserving to be determined by the highest Court of the land.

The relevant law is Section 5 (2) (c) of the Appellate Jurisdiction Act 1979, which provides for appeals originating from Primary Court and which provides: “No appeal shall lie against any decision or order of the High Court in any proceedings under Head (c) of Part III of the Magistrate's Courts Act, 1963; unless the High Court certifies that a point of law is involved in the decision or order.”

- ✓ **Revisionary** under the Appellate Jurisdiction Act of 1979 as amended in 1993 it has powers over the decisions by the High Court and Resident Magistrates’ Courts with extended jurisdiction. It is important to note that the avenues of appeal and revision are not alternatives for an aggrieved person to choose. The judicial practice is that where there is a right to appeal it must be pursued instead of revision. Appeals and revisions are mutually exclusive. A person may pursue revision in a situation where he had a right to appeal where the right to appeal was blocked by a judicial process or where he had a good cause for not pursuing the appeal. But generally in very rare instances will a person who had the right to appeal be allowed to pursue revision instead.

2. The High court

It was established under Art.108 C.U.R.T. According to S.2 of the Judicature and Application of Laws Act, Cap.453, the High Court has unlimited jurisdiction and also has original jurisdiction on certain cases where the law expressly states so, as per Art.108 (2) C.U.R.T.

The High Court has the following powers:

- a) Has power to determine appeals from subordinate courts under SS.359 CPA; 25(1) (a), 43(1), 31 and 43 (2) of the M.C.A
- b) Has a revisionary power of decisions of subordinate courts, as per SS.372 C.P.A; 43(2), and 31 M.C.A.
- c) Has a supervisory power over the subordinate courts per SS.30 and 44(1) (a) M.C.A.

The High Court was established by Article 108 of the Constitution. A Judge sits with assessors whose opinions are not binding. However a judge should record his reasons for departing from the opinion of assessors (the Balland Singh Rule enunciated by the Eastern African Court of Appeal in the Balland Singh case).

❖ Prosecution

Only State Attorneys may appear as prosecutors in the High Court.

❖ Jurisdiction

- ✓ **Territorial** The High Court jurisdiction is limited to the Tanzanian mainland which is the whole of Tanzania excluding Zanzibar. Note that the term territory shall extend to vessels, and aircrafts registered in Tanzania wherever they may be and also include the premises of a Tanzanian Embassy abroad.
- ✓ **Original** It is the Court of first instance for serious offences like murder and treason attracting death penalty (s. 2(1) of the Judicature and Application of Laws Ordinance). However, no criminal case will be instituted in the High Court until the same has been inquired into by a subordinate Court by way of Preliminary Inquiry/ Committal Proceedings, and the accused has been committed to the High Court for trial. Trials in the High Court commence after Committal proceeding are held in a subordinate court (District/Resident Magistrates' Courts) as per Sections 178, 243 and 244 of the CPA 1985.
- ✓ **Subject Matter** under Section 2 of the Judicature and Application of Laws Ordinance it has full criminal jurisdiction. See also section 164 CPA.
- ✓ **Appellate** It has appellate jurisdiction from subordinate Courts. It can hear appeals on both points of law and facts. However, appeals originating from Primary Courts will be on matters of law only because this will be the second appeal after having preferred the first appeal to either the District or Resident Magistrate's Court. Appeal as a matter of right in mainland Tanzania, is up to two levels only, the first level on both matters of facts and of law and in the second level, only on matters of law.

❖ Powers

In its appellate jurisdiction it has the power to (s. 29 MCA):

- Take additional evidence;
- Confirm, reverse, amend or vary in any manner the decision or order appealed;
- Substitute a conviction or conviction and sentence for an acquittal or make a declaratory order. The decision or order altered cannot exceed the jurisdiction of the court of first instance;
- Quash any proceedings and order the case be heard de novo.

The High Court powers of supervision include the ability to (s. 30 MCA):

- Call for and inspect the record of any proceedings in a district or primary court; or
- Direct a district court to call and inspect the records of a primary court. The purpose is for the court to satisfy itself of the correctness, legality and propriety of any decision or order and as to the regularity of any proceedings.

The High Court has the power to:

- Revise itself any proceedings of a district court;
- Where exercising appellate jurisdiction revise itself proceedings in the primary courts; or
- Direct the district court to revise such proceedings of the primary court.

3. The Resident Magistrate's Courts:

The RM'S court is established under section 5 MCA by the order of Chief Justice. This order must be published in the Government Gazette and must specify the designation and area of jurisdiction as per SS.5 (1), (2) and (3) MCA. The powers of the RM'S court are;

- a) RM'S court and District courts according to S.41MCA are empowered to exercise the same powers.
- b) RM in charge has the revisionary powers per SS. 44(2) (3) and 30(2) (a) MCA.
- c) RM can be given extended jurisdiction per SS.45 MCA and 173 CPA.

The powers of these courts are similar to those of the District Court except from where stated otherwise. Whereas in terms of subject matter in civil cases, the Resident Magistrates' Courts have wider jurisdiction than the District Courts, in criminal cases generally the two courts have equal jurisdiction in terms of subject matter/ types of offences and sentencing power.

However geographically, the Resident Magistrate's Court has wider jurisdiction than the District Court.

- ✓ A single resident magistrate sits and there are normally no assessors or a jury (s. 6 MCA).
- ✓ A District Magistrate cannot legally preside over proceedings instituted in a Resident Magistrate's Court. He has no jurisdiction as such.
- ✓ A Resident Magistrate may preside over the District Court and properly conduct proceedings as such (i.e. as a District Magistrate sitting in a district court). All Resident Magistrates are also District Magistrates, while the opposite is not the case.
- ✓ If a District Magistrate presides over a matter instituted in a Resident Magistrate's Court, the trial becomes a nullity for lack of jurisdiction on the part of the District Magistrate.

The Court of Appeal of Tanzania in Criminal Appeal No. 48 of 2002 (unreported) between **Iddi Shabani & 2 others v. Republic** remarked as follows:

“The crucial question is whether the proceedings before the senior district magistrate were a nullity as a result of the magistrate sitting in the court of resident magistrate. Without hesitation, we are in agreement

with Mr. Masaju that the proceedings were a nullity. S. 6 (1) (c) is very clear that a court of a resident magistrate is duly constituted when presided over by a resident magistrate. Paragraph (c) of the sub-section does not provide for a district magistrate to sit and hear a case filed in the court of resident magistrate. In a number of decisions it was held that proceedings before a district magistrate sitting in the court of resident magistrate contrary to section 6 (1) (c) of the Act were a nullity”.

❖ Prosecution

Police officer of the rank of Assistant inspector upwards would prosecute the case as a Public Prosecutor. State Attorneys or Public Prosecutors also prosecute cases and progressively replace the Police Officers as prosecutors since the introduction of the National Prosecution Service in 2008.

❖ Jurisdiction

- ✓ **Territorial**, Resident Magistrate Courts have jurisdiction over such areas as specified in the order establishing it (s. 5 MCA). In practice, the territorial jurisdiction of the Resident Magistrate’s Court is within the Region for which it is established. However, the order establishing the Resident Magistrate’s Court may provide for its territorial jurisdiction beyond the region in which it is established.
- ✓ **Concurrent**, Under Section 41 of the Magistrates’ Courts Act of 1984, both the District and Resident Magistrates’ Courts have concurrent jurisdiction.
- ✓ **Extended**, Section 173 of the Criminal Procedure Act empowers the Minister for Justice to vest any Resident Magistrate with powers to try any category of offences, which, ordinarily is tried by the High Court. Thus, for example, some Resident Magistrates can be given extended jurisdiction to try offences punishable by death penalty.

The powers of extended jurisdiction are personal given to the particular Resident Magistrate, not to the particular Court. There can be several Resident Magistrates in a particular Court but only one or some few of them may possess the extended jurisdiction. Also it is important to note that the power of extended jurisdiction may be conferred upon the particular Magistrate either specifically to hear only certain specified cases transferred to him or may be general powers to hear any such cases as may be transferred to him by the High Court from time to time.

The procedure governing the trial in Resident Magistrate’s Court with Extended Jurisdiction will be the same as that which would govern the trial in the High Court and thus the Resident Magistrate’s Court thereby acquires the powers which the High Court would have if it dealt with the case. For example the Resident Magistrate (Ext. Jurisdiction) will be obliged to sit with at least two assessors. (s. 174 CPA).

However, it is crucial to note that by the extension of jurisdiction, the particular Resident Magistrate does not actually become a judge of the High Court and his Court is not elevated to the status of the High Court. It still remains a Resident Magistrate’s Court but with extended Jurisdiction. This in practice will be reflected by the title of the documents filed which will still read “in the Resident Magistrate’s Court, not “in the High Court”, manners of addressing the Court and other practical aspects continue to be those of the Resident Magistrate’s Court.

The Court of Appeal of Tanzania had several occasions to stress on this aspect which has caused great confusion among legal practitioners. In Criminal Appeal No. 6 of 2004 between **Shiminimana Hisaya and Sabimana Fokas v. The Republic (unreported)** the Resident Magistrate with Extended Jurisdiction presided over a case transferred to him by the High Court. The documents filed and proceedings showed that the Resident Magistrate's Court was being referred to as the "the High Court of Tanzania", when the matter went on appeal to the Court of Appeal of Tanzania, the Court of Appeal remarked as follows: "The resident magistrate exercising extended jurisdiction is deemed to be a judge of the High Court because he is not, in fact, a judge of the High Court and the court of resident magistrate in which he sits when exercising extended jurisdiction is deemed to be the High Court because it is not in fact the High Court. If a resident magistrate exercising extended jurisdiction was expected to sit in the High Court then it would make no sense to say that such court would be deemed to be the High Court. The rationale, therefore, is that a resident magistrate with extended jurisdiction to whom a High Court appeal is transferred to hear would sit in their court – the court of resident magistrate.

When he does so, then the court would be deemed to be the High Court in the event an appeal is preferred from his decision. The appeal would go, not to the High Court but, to the Court of Appeal as if it had been a decision of the High Court. Where a resident magistrate with extended jurisdiction hears an appeal transferred to them and sits as the High Court that would make nonsense of the transfer order because the High Court would not transfer its own case to itself. Now, if a resident magistrate with extended jurisdiction who, of course, is not a judge of the High Court, purports to sit in the High Court to hear a High Court appeal which was transferred to them, the proceedings and decision will be null and void because of want of jurisdiction."

❖ Powers

In its supervisory jurisdiction a resident Magistrate in-charge has powers to call and inspect the record of proceedings in a resident magistrates' court, district court or primary court and to record with a report to the High Court (for resident magistrates' or district courts) or to the district court (for primary courts) (s. 30(2) MCA).

4. District Courts

District court is established under S.4 MCA. The DC normally exercise jurisdiction within the relevant district unless such jurisdiction is extended by the Chief Justice as per S.4 (5) MCA. District courts have the following powers:

- a) Power to try all cases covered by the Penal Code or other cases specified by any other law, SS. 40(1) and 42(a) MCA.
- b) Power to hear appeals and revision over the decisions of the primary courts in their relevant districts SS.20-22 MCA.

c) Power to sentence convict brought to them by primary courts under the Primary Court Criminal Procedure Code.

d) Appellate powers on all matters involving points of law from the Ward Tribunal under the Ward Tribunal Act, 1985.

❖ **Prosecution**

A Police officer of the rank of Assistant inspector upwards would prosecute the case as a Public Prosecutor. State Attorneys and Public Prosecutors also have audience.

❖ **Jurisdiction**

- ✓ **Territorial**, the jurisdiction of the District Courts is within the district it is established in (s. 4 MCA), unless its jurisdiction is extended by the Chief Justice to cover other areas beyond the district (s. 45 (5) MCA).
- ✓ **Subject Matter**, District courts are normally criminal courts with powers to try all offences covered by the Penal Code, except some serious offences including those punishable by death penalty (murder and treason). They have original jurisdiction over those proceedings for which jurisdiction are conferred upon it by law (s.40 MCA).

❖ **Appeals**

- ✓ Appeals against conviction or acquittals and sentences can be made by the complainant or the DPP to the High Court (s. 43 MCA). In such appeals the High Court has general powers of supervision and revision (s. 44 MCA).

❖ **Powers**

In its appellate jurisdiction it has the power to (s. 20 MCA):

- ✓ Direct a primary court to take additional evidence or to hear additional evidence itself;
- ✓ Confirm, reverse, amend or vary in any manner the decision or order appealed;
- ✓ quash any proceedings;

- ✓ Order the case to be heard de novo. The altered order cannot be in excess of the primary court's jurisdiction. In the case of an appeal against sentence it can deal with the matter in any manner in which it could have been dealt with by the district court (s. 23 MCA).

In its revision jurisdiction it has the power to call for and examine the record of proceedings in the primary courts and may revise such proceedings (s. 22 MCA).

5. Primary Courts

Primary courts are established under S.3 MCA, however the CPA does not govern them but the Primary Court Criminal Procedure Code governs the procedures, which is the third schedule to the MCA.

Primary courts are required to sit with two assessors and before the final verdict is passed, the magistrate must consult them as per S.7 (1) MCA and Rule 3 of GN.No.2 of 1988.

Primary courts have no general criminal jurisdiction except for what is covered by the first Sch. to the MCA as per S.18 (1) MCA. Under S.18 (3) MCA the minister may increase the list of offences triable by the primary courts where he deems fit.

Primary courts act as a final court of appeal from all appeal originating from the Ward Tribunals in their respective areas as per Ward Tribunal Act, Cap. 206. However, where the primary court specifies that a particular matter involve a point of law a further appeal may lie to the Primary court under S.20 of the Ward Tribunal Act, Cap.206.

❖ Composition In Primary Courts

- Magistrate sits with no less than two Assessors when hearing cases (s. 7(1) MCA).
- The Assessors give an opinion in the final determination of the case, which is binding on the Magistrate. A final decision is reached by majority votes. In the event of an equality of votes the magistrate has a casting vote in addition to his deliberate vote (s. 7(2) MCA).

❖ Prosecution

Trials are prosecuted by the complainant, except in urban areas where a Police Sergeant, a Corporal or even a Police Constable may do the prosecution. No advocate or public prosecutor can appear or act in the Primary Courts (s.33 MCA).

❖ Jurisdiction

- **Territorial Jurisdiction**, Primary Courts have jurisdiction within the district it is in established (s. 3(2) MCA).
- **Subject Matter**, Its jurisdiction is mainly for offences appearing in the First Schedule to the Magistrates' Courts Act, 1984. In this schedule Part I contains offences under the Penal Code and Part II contains offences under other laws (s. 18(1) (c) MCA). Primary courts have no jurisdiction to deal with serious offences like murder and treason.

❖ Rules and Procedures

- Primary Courts are governed by their own rules under the Primary Courts Criminal Procedures Code (s. 19 MCA).
- Powers It has the power to issue summons for attendance at court, to compel a witness to give evidence and to issue injunctions (s. 19(3) MCA).

❖ Sentencing

Primary Courts have the power to hand down the following sentences:

- ✓ Imprisonment for a term not exceeding twelve months;
- ✓ A fine not exceeding ten thousand shillings (changed);
- ✓ Corporal punishment not exceeding twelve strokes;
- ✓ Where a stiffer sentence is desired than the Primary Court can legally impose, it should convict the accused of the offence charged and commit him to the District Court for sentencing;
- ✓ Where there is a minimum sentence prescribed for the offence by the Minimum Sentences Act, the Primary Court will have jurisdiction to impose that sentence even if it is above the 12 months provided that that sentence cannot be more than 3 years and a half (ss. 2 and 3 of the Third Schedule to the MCA - Primary Court Criminal Procedure Code).

❖ Appeals

Appeals against conviction or acquittals can be made by the complainant or the DPP to the District Court in the district the Primary Court is established (s. 20 MCA). A person convicted against his own plea of guilty can only appeal against (s. 20 MCA):

- ✓ a sentence for imprisonment for the minimum sentence prescribed by Section 4 of the Minimum Sentences Act 1972; or
- ✓ an order for the imposition of corporal punishment against a male under 16 or over 45 years or a female;

- ✓ an order for payment of compensation above 100 shillings. Appeals must be filed in the district court within 30 days after the date of the decision or order (s. 20(3) MCA).

N.B- The language of regular courts in Tanzania is English or Kiswahili, apart from primary courts where it is only Kiswahili (s. 13 Magistrates Court Act 1984) ("MCA").

6. Other criminal courts

a) Court Martial and Court Martial Appeal Court:

Court martial are military tribunals, which are trying servicemen who commit service offences in their course of duties or assignments. The National Defense Act, Cap. 192 creates these tribunals. Regulations of procedures are made under S.66 N.D.A. The president under S.96 NDA convenes the tribunals. These tribunals have exclusive jurisdiction to deal with service offences as per Art.111.5 of the Regulations.

Appeals from the decision of the court martial go to the court martial court of appeal, which is in the actual sense the full bench of the High Court. Per S.146 N.D.A

Military courts do not try civilians but only military personnel for criminal offences. They have the power to pass death penalty for certain specified offences under the National Defence Act of 1966. Appeals from the Court Martial go to the Court Martial Appeals Court. A further appeal lies before the full bench of the High Court as per Section 146 of the Act. Section 153 of the Act prohibits further appeal to the Court of Appeal of Tanzania.

b) Economic Crimes Court

This court is established under S.3 of the E.O.C.C.A. 1985, general it is the High Court sitting as an economic crimes court, and its constitution include one judge and two laymen u/s.4 E.O.C.C.A. Under S.13 (3) due to amendments made in 1987, District Courts can now sit as economic crimes courts, subject however, under the certificate of the D.P.P.

c) Juvenile Courts

These courts are established under the Children and Young Persons Act Cap.13 to deal with juvenile offenders. Normally the District Courts in Tanzania are juvenile courts. The aim here is to save the children from the rigors of procedures involved in respect of adults, thus a need to establish special courts for that case, also this is in line with international laws on the rights of children.

Juvenile Courts have jurisdiction over matters concerning children, including delinquency, neglect, and adoption. They also handle "status offences" such as truancy and running away, which are not applicable to adults. The upper age of juvenile court jurisdiction in delinquency matters is 17 in most States. These Courts are governed by the Law of the Child Act 2009.

d) Special Traffic Courts

Special Traffic Courts are established under Section 17 Magistrates' Court Act 1984.

e) Ward Tribunals

The Ward Tribunals are provided for under the Ward Tribunal Act no. 7/1985. There is normally one Tribunal per ward; however the Minister is empowered to establish two tribunals in a single ward (s. 3).

The composition of each tribunal is at least 4 but not more than 8 members elected by the Ward Committee plus the Chairman and a Secretary appointed by the appropriate authority and the local government respectively. Members and Chairman of the Tribunal must be residents of the ward in question but that is not so for the Secretary. The quorum is half of the total number of members and the decision of the majority shall be the decision of the Tribunal and in the event of an equality of votes the Chairman shall have a casting vote in addition to his original vote (s. 4).

Section 5(1) sets out the qualifications of members and Section 5(2) provides for the qualifications of the Secretary. Section 6 provides for the tenure of office of members to be 3 years but eligible for re-election. The primary function of the Tribunal is to secure peace and harmony by mediating and endeavoring to obtain just and amicable settlement of disputes. The exercise of the Tribunal's compulsive jurisdiction shall be only after attempting to reach a settlement. An order of a Tribunal for imprisonment shall be in the prescribed form but it shall have no force of law or effect unless endorsed by the Primary Court Magistrate. The Primary Court Magistrate is required to endorse such order without delay unless he has reason to believe that the Tribunal acted without jurisdiction or in excess of its powers, in which case he shall revise the order. If the order is endorsed, it shall have the same effect as any sentence of imprisonment imposed by the Primary Court (s. 19).

Appeals may be made within a certain period to the Primary Court. But where the amount of fine or award is not too big (500/= fine in criminal cases and 800/= award in civil cases) leave of the Primary Court to appeal is required. Decisions of the Primary Court shall be final and conclusive except on points of law where the final appeal lies to the district Court (s. 20).

Jurisdiction Territorial They have jurisdiction over district councils or the urban authorities within whose area the Tribunal is established (s. 2).

Matter The Tribunals have jurisdiction over (s. 8): □ minor offences under the Penal Code, □ all matters and disputes arising under all laws and □ directives passed by the appropriate authority, in relation to or affecting the business and affairs of the ward made or passed by a local government authority or any competent legislative authority within the area of the Tribunal's jurisdiction.

JURISDICTION

Meaning of jurisdiction

Simply jurisdiction means the extent to which or limits within which a court can lawfully exercise its powers. It is the powers and limits of courts, magistrates or judges to entertain cases and pass a particular sentence. The law must prescribe these powers or limits and the court must make sure that it has power before exercising such jurisdiction. Read the case of **R. vs. Samwel [1982] TLR 324.**

The limits of the court may be geographical or pecuniary or categories of cases to be entertained by such courts. Thus it is very important for the magistrate before taking cognizance of any case to make sure he/she has jurisdiction to entertain such case. The consequences of trying a case without jurisdiction is that any decision made by a magistrate will be illegal and with no legal effect.

Jurisdiction is the defined area over which authority and responsibility extends. Jurisdiction may refer to that of a State or an institution such as a Court. Jurisdiction can also be defined as powers and limits of courts or judges to determine proceedings of a particular type and or pass a particular sentence. No court is allowed to entertain an issue, be it criminal or otherwise, without powers to do so. There must be a law specifically conferring jurisdiction to a court before that court can exercise it. Whatever decision made by a court with no jurisdiction such decision is illegal and of no legal effect.

Types of Jurisdiction

1. Original Jurisdiction

Original jurisdiction refers to the powers conferred on a court to try a case at a first instance. By this we mean that a case must be instituted and tried by a lower court first, and if a need arise, move to the next court higher in ladder. This can be by way of appeal, revision or transfer.

The court enjoying original jurisdiction has several powers, such as issuing necessary court processes, e.g.; warrant of arrest, search warrant and summons. However even if the court is not empowered to exercise original jurisdiction, it can issue court processes E.g. primary court has no power to entertain murder cases, but can issue warrant of arrest to apprehend the suspect of murder.

Powers of the court under original jurisdiction are:

- ✓ Power to receive complaints
- ✓ It may issue court processes.eg. warrant of arrest, search warrant and summons
- ✓ Power to hear the prosecution and defence cases
- ✓ Power to sentence the accused person

2. Appellate Jurisdiction

This is the power given to a higher court in a ladder to deal with a case from a lower court sent to it by way of an appeal. According to Art.13 (6) (a) C.U.R.T. appeal is a constitutional right to any party to a criminal proceeding if he is aggrieved by a decision of a court.

The court on appeal may exercise the following powers:

- ✓ May maintain, alter or reverse the lower court's finding and or Sentence.
- ✓ May acquit or discharge the accused and thereby order a retrial, or direct for committal proceedings or make any amendment or any consequential or incidental order that may appear just and proper under the circumstances of the case. Read ss.366CPA and 21, 29, MCA.

The appellant may further appeal to the next higher court if not satisfied. This depends on a number of circumstances e.g.; it is not possible to appeal beyond the Court of Appeal; this is the final court in the ladder. Another instance is where the High Court certifies that no point of law is involved and the matter originates from the Primary Court, or where the High Court rejects the appeal summarily under s.364 CPA.

3. Extended Jurisdiction

This is the type of jurisdiction that is conferred on magistrates. This jurisdiction is given when the minister responsible for legal affairs extends the appellate or ordinary jurisdiction of a Resident Magistrate under section 45 MCA or 173 CPA.

This enables the magistrate to be able to hear appeals or to determine any categories of offences or cases otherwise determinable by the High Court.

Once the jurisdiction has been extended, the magistrate carries all the powers, limits and duties per section 174 CPA of the High Court in terms of trying and sentencing the accused.

This jurisdiction has the ordinary meaning of the word. When the jurisdiction is extended in terms of territory, subject matter, sentencing, etc. This category of jurisdiction is not for the court but for magistrates. It arises where, either under s. 45 MCA or under s. 173 CPA, the Minister responsible for legal affairs, extends the appellate or ordinary jurisdiction of a Resident Magistrate. The extension enables such a magistrate to be able to hear appeals or to determine any categories of offence or cases

otherwise determinable by the High Court. The extension need not be specific but it must be published in Government Notice.

4. Revisionary Jurisdiction

This is the power of the higher court to call for the records of any criminal proceedings before any lower court for the purposes of ascertaining the regularity of the proceedings, correctness, legality or propriety of the subordinate court's finding, sentence or order recorded or passed in respect of the proceedings. If during revision the court finds any error, it is empowered to correct it for the interest of justice.

In calling for the records, the court may act on its own motion or of the parties or of the court that dealt with the proceedings. Ss.372-376 CPA & Ss.22-31 MCA.

5. Summary Jurisdiction

This is the power of the court to deal with the case without taking evidence. Normally this happens when dealing with petty offences. The court is only allowed to exercise this power when it is fully satisfied that the allegations are true and the decision will occasion no injustice to the parties. E.g.; contempt of courts S. 213 CPA.

6. Sentencing Jurisdiction

When it comes into the question of sentencing, some courts have limited powers—S 170 CPA. When the circumstances calls for a greater punishment the accused must be committed to the High Court for sentencing-S170 CPA. Where the magistrate is exercising extended jurisdiction, the sentence of death passed shall have the same effect as the one passed by the High Court-S175 CPA. Act No.32/94.

7. Committal Jurisdiction

This is a situation where a subordinate court undertakes preliminary inquiry over a case in order to ascertain whether sufficient evidence exist so as to send the case to the higher court for trial. Normally all cases triable by the High Court should be initiated by way of committal proceedings in the District Court. Ss. 243-263 CPA

8. Exclusive Jurisdiction

This is the power given to certain court to try certain cases. E.g., offences punishable by death are exclusively domain of the High Court; service offence cases against military men in the course of their duties are exclusively triable by the court martial under the National Defense Act.

9. Concurrent Jurisdiction

In criminal cases, criminal courts are empowered to try certain matters concurrently. E.g., High Court enjoys concurrent jurisdiction with other subordinate courts to try all cases triable by such courts, as per section 164(2) CPA, First Sch. to the CPA & section 63 MCA.

10. Pecuniary Jurisdiction

This is the limitation of power of court by the value of the subject matter E.g. in civil matters. In criminal matters pecuniary jurisdiction applies to sentences of fine by subordinate courts. S. 170 (1) CPA. For primary courts see Third Sch. MCA Part 111.

11. Territorial Jurisdiction

This refers to the geographical limits of the courts. It refers to the localities upon which a given court is to discharge its powers. In principle no court is allowed to discharge its powers beyond the local limits conferred on it by the law. S. 177 CPA. In justice Katiti (as he then was) in Koskei's case observed that: "If the conduct complained of was committed outside [Tanganyika], the courts have no jurisdiction to try anybody involved without clear statutory permission..."

Exception Where the court is conferred with extra-territorial jurisdiction to try cases committed outside Tanzania. S. 6 (b), (c) Penal code.

Read: **Nestory Lutta v. R Cr. App. No. 186/87 (HC) (MZ)** the appellant and two others were charged with robbery with violence c/ss.285&286 of the Penal Code. The first accused was acquitted while the second accused and the appellant were found guilty and convicted. According to the established facts, the alleged offence was committed at MSIBA village, RUNGA region in the Republic of BURUNDI. The issue was whether the NGARA District court in KAGERA region in TANZANIA had jurisdiction to try the case. MWALUSANYA, J. held that under section 177 CPA two situations might confer jurisdiction:

a) Where the offence is committed within Tanzania and the accused is within the local limits of the court's jurisdiction.

b) Where the offence is committed outside Tanzania but some law confers jurisdiction to the court to try the case. The first situation is less problematic. The second situation needs a specific law that should confer jurisdiction upon the court to try the case. According to MWALUSANYA that law is contained under section 6 of the Penal Code particularly S.6 (b) &(c). In regard to subsection (c)

The judge held that the provisions were restricted to international law crimes like, piracy, hijacking, slave trade as well as injury to submarine cables.

R. vs. Ismail s/o Hamisi (1969) HCD No. 8 accused pleaded guilty in a district court to a charge of intentional endangering the safety of persons traveling by railways c/s 224(2) P.C. It was held that the criminal code requires that such offences be tried by the High Court. A District Court may hold preliminary inquiry and commit the accused to the High Court, but may not take a plea or sentence the accused.

R. vs. Pangavas s/o Liprima (1968) H. C. D. No 178 after convicting the accused of causing death by dangerous driving. The District Magistrate doubted whether he had jurisdiction to have ever heard the case. Accordingly he forwarded the proceedings to the High Court for necessary action in revision. S.44 (2) of Cap.68 provides for the hearing of cases such as this one by Resident Magistrate. This term only embraces RM'S and SRM'S. As the DM had no jurisdiction to hear the case, the proceedings were declared a nullity and purported conviction quashed

12.Jurisdiction conferred by DPP

The Director of Public Prosecutions (DPP) has been given powers to confer jurisdiction to certain courts in certain instances. Thus, the DPP may confer jurisdiction upon a court which ordinarily does not have that jurisdiction save for the conference by the DPP. This power is normally in respect of the following instances.

Economic offences triable by subordinate courts generally, the economic offences are triable by the Economic Court which is the High Court sitting as such. The economic offences are those stipulated by the Economic and Organized Crimes Control Act Cap 200. The first schedule to the Act provides the economic offences to include:

- ✓ Offences relating to conservation of wildlife under the Wildlife Conservation Act;

- ✓ hoarding commodities;
- ✓ Corruption offences under the Prevention and Combating of Corruption Act 2007;
- ✓ Money Laundering.

The economic offences are generally triable by the High Court. However the DPP may confer jurisdiction upon subordinate courts to try the economic offences. Section 12(3) of Cap 200 (The Economic and Organized Crime Control Act) empowers the DPP or state attorney duly authorized by him to order that any case involving an offence triable by Economic Court, to be tried by a subordinate Court as he may specify in the certificate made under his hand. This is known as a certificate of order for trial. Section 12(5) of Cap 200 provides that the certificate when lodged to in the Court concerned, shall constitute full authority and confer jurisdiction upon the court to try the case in question.

Economic court to try non-economic offences as the name suggests, the Economic Court has jurisdiction to try economic offences. However, the DPP may confer upon the Economic Court jurisdiction to try non-economic offences. This is provided under Section 12(4) of Cap 200. Where the DPP deems appropriate, he may order that a case instituted in a subordinate court involving a noneconomic offence or involving both economic and non-economic offences to be instituted in the Economic Court. In this scenario, the DPP confers upon the Economic Court jurisdiction to try a non-economic offence which ordinarily it could not have jurisdiction over it. It should be noted that if an economic offence is instituted before a non-economic Court without the certificate of order for trial by the DPP, such court will lack jurisdiction over the matter and the trial thereby conducted shall be rendered a nullity.

Jurisdiction of the Court to control proceedings when dealing with the offences falling under their jurisdiction, the subordinate Courts have powers to control and regulate those proceedings. In this regard, the Magistrate has powers to reject a complaint or formal charge brought before it where there is a good cause. Also, it has powers to order the date, time and venue where it will sit within its jurisdiction. It may decide to sit even on Sunday or a public holiday (see ss. 10(3) and (5) of CPA and see also other powers ss. 10(1) and 10(2), 29, 33, 64(1) (c), 67(3) 157, 225 all of CPA). The cumulative powers given to the trial subordinate Courts by these sections and others, is that the court has power to control its own proceedings and this in effects results into control of the powers of DPP.

13. Defects going to the root of jurisdiction

These are some errors/defects in the proceedings which in effect take away the Court's jurisdiction and render the whole proceedings null.

For example, a subordinate Court trying an offence which is only triable by the High Court such as murder, manslaughter, incest, abuse of office, economic offences etc. Such a trial will be rendered a nullity. In **R v. Mrisho Seifu (1968) HCD**, a district court convicted the accused of an offence of incest by males, an offence which is triable by the High Court. On revision, the High Court declared the trial a nullity.

14. Errors of procedure that do not take away jurisdiction

These are minor errors of procedure which do not result in removing the Court's jurisdiction.

The trial therefore, though irregular, cannot be declared null. These are errors which have not occasioned failure of justice and thus can be cured under Section 388 of CPA.

For example, preferring a charge under a repealed legislation is an error or irregularity. But such an error is curable and does not render the trial a nullity if the repealed section is actually re-enacted in identical words in the current statute such that it cannot be said that the accused in any way has been prejudiced by the irregularity (see **Magesa Mjunja v. Republic (1986) TLR 10**).

15. Uncertainty of Jurisdiction

This is a situation where the subordinate Court is not certain as to whether or not it possesses the requisite jurisdiction in the particular case before it. The cause of the uncertainty may be due to the nature of the offence, the geographical area where it was committed etc. It is not desirable for the court to try a case over which it is not sure of having jurisdiction because the first thing a court should ascertain in any matter before it is that it has jurisdiction over it. If jurisdiction does not exist the whole trial may be an unnecessary waste of time and resources and could be declared a nullity for lack of jurisdiction. When there is uncertainty of jurisdiction, Section 185 of CPA provides that the matter should be referred to the High Court for determination as to the jurisdiction of the Court.

16.Power of the High Court where a fair and impartial trial cannot be effected

The High Court has supervisory jurisdiction over the subordinate Courts. To this effect under Section 191 of CPA, the High Court has power to make some orders in respect of proceedings going on or pending in subordinate courts as may be necessary for a fair and impartial trial in the subordinate Courts.

These powers include:

- ✓ to order that any particular case or class of cases be transferred from one subordinate court to another provided that the transferee court is equal or superior to the transferor (original) subordinate court; or
- ✓ The High Court may order that any accused person in a subordinate court be transferred from the subordinate court and committed to the High Court itself for trial.

The High Court may invoke these powers on its own motion (suo motu) or on application by a party interested or on report by the lower court.

The grounds upon which such powers of the High Court may be invoked are:

- i. Where fair and impartial trial or inquiry cannot be conducted;
- ii. Where unusual difficulty questions of law may arise;
- iii. where it is desirable to try the case near the place where the offence was committed in order to conveniently visit it and such a visit or view is necessary for fair trial or inquiry;
- iv. Convenience of both parties to the case and or the witnesses;
- v. That such an order will result into expedient administration of justice.

CRIMINAL PROCEDURE AND PROTECTION OF INDIVIDUALS

RIGHTS

The administration of criminal justice is based on Constitutional principles that all people are equal before the law. Thus all people are entitled to a fair and public hearing by competent, impartial and independent court or tribunal.

The rights of those restrained by the police are set out under Sections 54 and 55 CPA, including the right to communicate with a lawyer, representative or relative and the right to be treated humanely and with respect for their human dignity.

Section 54 of CPA provides that: (1) Subject to subsection (2), a police officer shall, upon request by a person who is under restraint, cause reasonable facilities to be provided to enable the person to communicate with a lawyer, a relative or friend of his choice.

(2) A police officer may refuse under subsection (1) for the provision of facilities for communicating with a person being a relative or friend of a person under restraint, if the police officer believes on reasonable grounds that it is necessary to prevent the person under restraint from communicating with the person for the purpose of preventing–

- (a) The escape of an accomplice of the person under restraint; or
- (b) The loss, destruction or fabrication of evidence relating to the offence.

Section 55 of CPA provides that:

- (1) A person shall, while under restraint, be treated with humanity and with respect for human dignity.
- (2) No person shall, while under restraint, be subjected to cruel, inhuman or degrading treatment.
- (3) Where a person under restraint–
 - (a) Makes a request to a police officer to be provided with medical treatment, advice or assistance in respect of an illness or an injury; or

(b) Appears to the police officer to require medical treatment, advice or assistance in respect of illness or injury, the police officer shall forthwith take such reasonable action as is necessary to ensure that the person is provided with medical treatment, advice or assistance.

Other rights are:

- ✓ Right to personal liberty
- ✓ Right to privacy
- ✓ Right to be availed with statement of prospective witnesses. [Section 9 (3) of CPA]
- ✓ Presumption of innocence, art 13 (6) (b) of the Constitution
- ✓ Right to fair hearing, art 13 (6) (a) of the Constitution
- ✓ Right to bail, section 148 (5) (b) of CPA
- ✓ Right against retrospective application of laws, art 13 (6) (c) of the Constitution
- ✓ Right to appeal, art 13 (6) of the Constitution

POWERS AND DUTIES OF POLICE OFFICER WHEN MAKING INVESTIGATIONS

Introduction

For a case to be prosecutable, sufficient and detailed facts about the alleged crime, the accused person, the victim, locality of the crime (locus on quo), the time and witness, must be known to the prosecutor.

The reason is that the case for the prosecutor must base on concrete facts and findings. For this reason therefore, it is always important to carry out a systematic examination/study of the criminal allegation before making the decision to prosecute, unless the accused is caught red handed or in front of a willing witness.

Investigation is usually carried out by the police department in the powers conferred to it by the Criminal Procedure Act, and The Police Force and Auxiliary Services Act, Cap. 322 and other public officers may as well carry on investigation, particularly, public officers with responsibilities to enforce specific laws, such as customs and tax laws, Ant-Corruption Bureau.

Police when making investigations have to bear in mind provisions of the Constitution of the United Republic of Tanzania, regarding human rights like presumption of innocence and the right of enjoyment of freedom. Also they have to bear in mind provisions regarding human rights provided in the International Instruments like The Universal Declaration of Human Rights—Art.11 (1), 10, & 12, International Covenant on Civil and Political Rights—Art.14, The African Charter on Human and People's Rights—Art.7 (1) on presumption of innocence, public trials.

Powers of the Police

According to section 5(1) of the Police Force and Auxiliary Services Act, the police are allowed to use force under the following circumstances;

- ✓ For the purpose of preserving peace,

- ✓ Maintenance of order
- ✓ For the purpose of prevention and detection of crimes
- ✓ The apprehension and guarding of offenders
- ✓ Protection of property.

The provisions of section 27(3) CAP. 322 provides that any police officer is duty bound to take all necessary steps to prevent the commission of offences and public nuisance and to apprehend all person whom he is legally authorized to apprehend and for whose apprehension sufficient grounds exists.

In performing the powers imposed on him, police officer is required to comply with PART II of the CPA. Failure to comply with this part will render the officer to be prosecuted for criminal trespass and also on civil action.

Inspector General of Police is empowered under section 7(2) CAP. 322 to make orders for general administration of the police force, ranks, duties, enlistment, transfers etc.

Powers to Receive Reports and Information

Any person who becomes aware of an offence punishable under the Penal Code, then according to section 7(1) (a) CPA is duty bound to give information to the police officer, or a person of authority to such locality. A person of authority may be a ten-cell leader, village chairman, ward and divisional secretaries and justice of peace.

This report is known as First Information Report (F.I.R.). This report is normally produced at the trial. This practice was said in the case of **Shabani Bin Donald V R (1940) EACA 60**, where it was said; “...In case like this, and indeed in every case, in which an immediate report has been made to the police by someone who is subsequently called as a witness evidence of the details of such report (save such portions of it as may be admissible as being hearsay or the like) should always be given at the trial. Such evidence frequently proves most valuable, sometimes as corroboration of the evidence of the witness under section 157 of the Evidence Act.... and sometimes as showing that, he is now purporting to identify a person who he really did not recognize at the time....”

According to section 7(2) CPA, the reports given to the police by such person about a crime are fully protected by the law; such reports are free from civil or criminal proceedings and as such are privileged or justified.

In the case of **Yohana Mujuni V Isaya Bakoli (1969) HCD. No.23**, the plaintiff sued the defendant for defamation, malicious prosecution and trespass. The parties were neighbors whose relation had all along been characterized by disputes. Such relation in one occasion compelled the defendant to report to the police that the plaintiff had threatened violence to his person c/s 89(1) PC. The police arrested the plaintiff and put him in prison for two days on top of a criminal charge against him. The defendant with the assistance of the police officers also uprooted his crops with the view of making good the dispute. But at the end of the day the plaintiff was acquitted of the criminal charges. He then sued the defendant for damages. The District Court awarded damages for uprooted crops but deferred him on other claims to loss of work and defamation. This position was upheld by the High Court on the ground that the defendant reported to the police an alleged offence and the police then took the action, which injured the plaintiff. The defendant had done what is perfectly justified, that is to say, to make a report that the appellant had been threatening him with violence, which is in law amounts to a crime. This case shows that in absence of an actual malice when a report is made to the police, no liability will arise to the reporter.

Another case is that of **Tumainiel V Aisa d/o Isaia (1969) HCD No.290**, where the parties were quarrelling over a custom that a person who makes unproven allegation should be condemned to compensate the other for injuries done to his person and reputation. The High Court overruled that custom in favor of modern criminal law and procedure which require that where there is a reasonable suspicion that an offence has been or is likely to be committed, a citizen has a duty to report the same to the police and he will not be liable for the allegation(s) even if the same is not formally proved, unless is maliciously instigated.

Furnishing false information could be punishable under section 102 or 106 PC. In this case the person affected by the information may sue the false informer for damages ensuing there from, particularly if the information results into an arrest and/or prosecution of another person.

How to Deal with Criminal Information

Information regarding to the commission of an offence may be given orally or in writing to a police officer, and the receiver of that information has to record it in the manner prescribed under section 10(3) CPA--S.9 (1) & (2) CPA. Then an entry in the R.B; name of the reporter, name of the victim, suspect of the offence committed, place and time and the name and rank of the officer receiving the information.

Police officer is empowered under section 10(1) CPA to visit the scene of crime, make investigation and arrest the offender.

Any police officer conducting an investigation is empowered under section 10(2) CPA to order in writing any person who is within the limits of the station and who is acquainted with the circumstances of the case to attend before such police officer. And the person so acquainted shall attend.

According to section 10(3) CPA the police officer is required to examine orally any person who is acquainted with the facts or circumstances of the case. And then he (the police officer) is supposed to reduce into writing any statement made by such person so examined. The statement may be in English or Kiswahili or in any other language familiar to the person examined. After recording such statement, it has to be shown or read over to him and such person shall be at liberty to alter or correct the statement. He (the person making the statement) signs that statement immediately below the last line and may call upon any person in attendance to sign as a witness of his signature.

The police officer recording the statement will put the following certificate below each statement; “I... hereby declare that I have faithfully and accurately recorded the statement of the above named...” The police officer is required under section 10(4) CPA before writing the statement, to caution the person examined/interviewed to answer all questions and tell the truth even if they expose him to a criminal charge, penalty or forfeiture.

Police officers under section 10(5) CPA are not allowed to offer or make or cause to be offered or made any inducement, threat, or promise to any person charged with an offence, so that he can make any statement with reference to the charge against him.

According to section 10(6) CPA statements taken by police officer in the course of investigation may be used in court subject of course to the rules of adduction and reception of evidence, however it should not be used for the purpose of corroborating the testimony of that person in court.

Section 10(7) CPA provides that, the production of a certified copy in any proceedings of the information referred in section 9 and section 20 will be a prima facie evidence of the fact that the information was given or the statement was made to the police. It is further provided that it is not necessary to call the police officer that recorded such statement as a witness solely for the purpose of producing the certified copy.

Powers to Investigate

The police officer is required to proceed to the scene of crime after receiving a report about the commission of any offence and to investigate the facts of the case, and circumstances of the case. Furthermore according to section 10(1) CPA the officer is required to take all necessary actions for the discovery and arrest of the offender.

The facts and circumstances of the case may require either a warrant of arrest or search warrant to be issued for the discovery and apprehension of the offender. If the victim was injured PF 3 has to be issued. It is advisable that a complicated case be investigated by a police officer that is higher in rank.

Powers to Interrogate

When the police officers are looking for the circumstances, which led to the occurrence of the offence, they need to interrogate people who are familiar with the case. The police officers are empowered to summon any relevant person within the local limits of their police station or any of the adjourning stations to appear before them for the purpose of examination as to the facts and circumstances of the case—S.10 (2) CPA. Such person so summoned must attend as directed failure of which could attract charges such as failure to obey lawful order c/s 124 PC.

After the attendance of that person, the examining police officer is supposed to reduce into writing any statement made by a person examined including the clarification as per section 10(3) CPA, just like writing a statement.

Before examination it will be the duty of the police officer to inform the person examined that he is bound to answer truly all questions relating to the case put to him by the police officer. And that he may not decline to answer any question relating to the case put to him and that he may not decline to answer any question on the ground that the question has a tendency of exposing him to a criminal charge, penalty or forfeiture—S.10 (4) CPA.

Powers to Ask Questions and Make Other Investigation Actions

According to section 48(1) CPA, a police officer is empowered;

- To ask questions

- To take other investigative actions;

In respect of any person who is under restraint in respect of an offence. The police officer is required to abide by the time/period available for interviewing of the person and not otherwise.

The period available for interviewing a person according to section 48(2) CPA, shall not be taken to:

- Make lawful the holding of the person under restraint during any period otherwise such provision, which make lawful the holding lawful.
- Authorizing the asking of any question or taking of other investigative action in relation to the person during a period of the investigation within which case those provisions which led to the holding and asking questions or taking other investigative actions will turn the holding of that person under restraint unlawful.

When a Person not to be Taken under Restraint

Section 49CPA says that, a person who has previously been under restraint in respect of any offence shall not be taken under restraint, except under the following reasons;

- A police officer does so in consequence of matters that have come to his knowledge after the person last ceased to be under restraint.
- Reasonable periods have passed since the person ceased to be under restraint.

Period Made Available for Interviewing Persons

According to section 50(1) CPA, the basic period available for interviewing the person is four hours. This period of four hours will commence at the time when such person was taken under restraint in respect of the offence.

When the basic period under section 51(1) CPA expires;

- ✓ Such police officer may extend the time to eight hours, but must inform the person to be interviewed accordingly;
- ✓ The police officer may make an application before the magistrate either before the expiration of the original period or that of the extended period for further extension of the period.

- ✓ According to section 51(2) CPA, where the police officer extends the period frivolously or vexatious, the person whose basic period is so extended may petition for damages or compensation.
- ✓ Where the application by a police officer has been made to the magistrate to extend the basic period, according to section 51(3) CPA he is supposed to give the person or his advocate an opportunity to make submissions in relation to the application and if satisfied that:
 - ✚ The person is in lawful custody
 - ✚ The police are doing their best to make sure that the investigation is being carried out as expedition as possible,
 - ✚ Given the circumstances, it would be proper to extend the period may proceed to extend the time for such further period as the court deem reasonable.
- ✓ Section 50(2) CPA, provides that in calculating the basic period for the interviewing, the following periods should not be counted as part of the interview;
 - ✚ The time when the person is being taken to the police station provided that the police officer escorting that person does not ask him questions.
 - ✚ The time that person takes to arrange for his lawyer.
 - ✚ The time the police takes to communicate with a lawyer a relative or a friend as requested by such person to do so under section 54(1) CPA.
 - ✚ The time that person takes to communicate with any person whom he is legally entitled to communicate.
 - ✚ The time taken to arrange for a person who is required by law to attend during the interview.
 - ✚ The time spent for waiting for his lawyer or any other person authorized.
 - ✚ The time spent by the person under restraint in consulting with his lawyer.
 - ✚ The time that person is caused to do any other act of investigation action.

Duties When Interviewing Suspects

According to section 52(1) CPA, police officer is empowered to ask suspect questions, this section also binds the police officer to inform the suspect that he has the right to refuse to answer any question put to him.

This will apply on whether the police officer believes with reasonable grounds that the suspect has committed a serious offence or that such information is really implicating the suspect in the commission of a serious offence. This procedure is not applicable to those offences under section 14 CPA.

When the police officer has informed the suspect that he has the right to refuse to answer any question put to him such police officer shall ask the suspect to sign or thumb print an acknowledgement that he (the suspect) has been informed of this right. The acknowledgment has to be in a prescribed form, bearing the date on which and the time at which he is so informed—S.52 (2) CPA. The form is prescribed in PGO 235.

The court may reject the evidence if the police did not follow/comply with the provisions of section 52(1) (2) CPA. If the police fail to produce the acknowledgement to show that the person was informed, the court shall presume that the person was not so informed unless the contrary is proved —S.52 (3) CPA.

Section 52(4) CPA applies where the suspect refuses to answer questions or disclose any information while the police in course of interrogation believe that such suspect has committed an offence and there is sufficient evidence against him, then the police officer shall charge him accordingly and caution him either orally or in writing. The police officer is required to inform the suspect that failure to answer such questions or disclose any information an adverse inference may be drawn to him and hence may be charged at that stage. However this is only done where there is eminent evidence implicating the suspect but such suspect is refusing to answer the questions put to him knowing that the answers may directly implicate him.

Persons under questioning to be informed their Rights

According to section 53 CPA, police officer is not allowed to ask any question to a person under restraint or do anything in connection with an offence unless he (the police officer) has complied with the following;

- ✓ Such police officer has informed him his name and rank

- ✓ Such police officer has informed him in the language he is fluent and if possible orally, that he is under restraint, and the offence for which he is under restraint.
- ✓ Such police officer has cautioned him and in the language that he (the suspect) is not obliged to answer any question asked other than a question seeking particulars of his name and address. He may communicate with a relative or a friend. This caution may be either in writing or orally.

The Right of a Suspect to Communicate with a Lawyer or a Relative

Section 55(1) CPA, requires that all persons under restraint should be treated with humanity and with respect to human dignity.

Section 55(2) CPA, prohibits persons under restraint to be subjected to cruel, inhuman or degrading treatment. Example of these acts may be beating, electrification and any other type of torture.

According to section 55(2) CPA, the police officer is required to take reasonable action to ensure that if the person under restraint request to be provided with medical treatment, assistance or advice in respect of illness or an injury is provided with such service. Also this applies where it appears to the police officer that such person under restraint requires medical treatment, assistance or advice in respect of illness or injury.

Recording of Interviews

When a police officer is interviewing a person in order to ascertain whether he has committed an offence has to record or cause such interview to be recorded. This requirement is mandatory unless it is in all circumstances impracticable to do so. According to section 57(2) CPA, when the person interviewed in order to ascertain whether he has committed an offence, makes a confession either orally or in writing relating to an offence, the police officer shall either immediately during the interview or immediately after the interview is completed make a record in writing setting out the following;

- ✓ The questions he asks and the answers given by the person
- ✓ The particulars of any statement the person make which is not prompted by a question from the police officer
- ✓ If the person writes a statement in his own hand during the interview, the time he started writing the statement

- ✓ The caution given to the person before he made the confession, the time it was given and the answer given by the person to the caution
- ✓ The time the interview started and the time when it was completed, if there was any interruption in between, the time it was so interrupted and recommenced.

After recording the interview, according to section 57(3) CPA, the police officer is required to write or cause to be written at the end of the record a certificate in accordance with the prescribed form and if the person can read then he shall;

- ✓ Show the record to the person and ask him to read it and make alterations, corrections or additions he thinks fit
- ✓ Sign the certificate at the end of the statement
- ✓ If the record extends more than one page, then he should initial each page.

If the person refuse or fails to comply with such requirements the police officer shall record in the statement what he has done and the refusal or failure to comply with the requirements.

When the person interviewed is unable to read or refuses to read or appears to the police officer not to read the record when it is shown to him, then according to section 57(4) CPA, the police officer shall;

- ✓ Read the record or cause the record to be read to the accused
- ✓ Ask the person if he want to alter, correct or add anything to the statement
- ✓ Make such alterations or additions the person want to make
- ✓ Ask the person to sign at the end of the record
- ✓ The police officer shall certify at the end of the record what he has done in compliance with this section.

Statement by Suspects

If the person under restraint inform the police officer that he wishes to make a statement then according to section 58(1) CPA, the police officer;

- ✓ Shall furnish him with any writing materials
- ✓ If the person has been cautioned before he proceeds to write the statement he should set out the terms of the caution made to him as far as he recalls.

According to section 58(2) CPA, where a person under restraint furnishes the police officer with a statement that he has written out, the officer shall write or cause to be written at the end of the statement a certificate in a prescribed form as required under section 57(3) CPA.

When the person under section 58(3) CPA refuses to read or appears to the police officer not to read a statement shown to him then the same procedure as provided under section 57(4) CPA, will apply.

Other Investigative Actions

Powers to take fingerprints, photos etc. of suspects

According to section 59(1) CPA, police officer in charge of a police station or any police officer investigating an offence has been given power to take or cause to be taken measurements of points of the hand, fingers, feet, toes, recording of the voice, photographs, samples of the handwriting of any person reasonably believed to be necessary for identification of the person for affording any other material evidence as to the commission of the offence.

The police officer in charge of a station or the police officer who is investigating an offence, may take the measurements or prints as provided above of any other person who is not charged with a crime if on reasonable ground, it is believed that it is necessary for identification of the person or for affording any other material evidence as to the commission of the offence—S.59 (2) CPA.

If a person refuses his measurements or prints being taken, then according to section 59(3) CPA, the police officer concerned may take reasonable steps including the use of reasonable force to secure such prints or measurements.

A person who refuses his measurements, prints or sample taken as required in this section is guilty of an offence, and on conviction will be liable to a fine of ten thousand shilling or imprisonment to twenty-four months or to both—S.59 (4) CPA.

According to section 59(5) CPA, a person having custody of the measurements, prints, photographs, recording or sample or their copies is required to destroy them under the following reasons;

- ✓ The person arrested is not prosecuted or if prosecuted is acquitted
- ✓ The person arrested is not charged with any offence and is no longer required to facilitate further investigation.

Power to Hold Identification Parade

The police officer in charge of a police station or the officer conducting an investigation is empowered under section 60(1) CPA to hold an identification parade for the purposes of ascertaining whether the witness can identify a person suspected of committing an offence.

The police officer in charge of a station or the officer in charge of the investigation may require any person to attend and participate in an identification parade if is of the opinion that the participation of such person is necessary for the investigation of an offence—S.60 (2) CPA.

If a person is required to attend and participate is not required to object or to refuse to attend and participate in an identification parade.

A person is guilty of an offence if without just cause or unreasonably refuses to attend and participate in an identification parade, and on conviction he will be liable to a fine not exceeding two thousand shillings or to imprisonment not exceeding six months or to both.

Conviction on Mistaken Identity

Where a person is convicted, prosecuted, punished on mistaken identity or suffers any loss or injury due to mistaken identity has to be compensated as a victim of the crime. If such person dies his legal representative will be compensated. This mistaken identity rising to compensation has to be established

on evidence. The assessment of compensation and manner of payment shall be governed by section 37 CPA.

Medical Examination

Upon an application of a police officer, a magistrate may allow a medical officer to examine a person in lawful custody in respect of an offence or may allow a medical officer to take and analyze any specimen from such person if he has reasonable grounds that the examination or analysis would provide evidence to the offence—S.63 (1) CPA.

After examination the medical officer shall submit a written report to the court—S, 63(2) CPA.

The court may in any proceeding order that any person who is a party to or a witness to the proceedings submit himself for medical examination—S.69 (3) CPA.

The medical officer after examining that person the court has ordered, to transmit a written report to the ordering court—S.63 (3) CPA.

CRIME REPORTS, INVESTIGATION & DETECTION OF CRIMES

1. Reporting Crimes

Under Section 7 of the CPA every person who is or becomes aware:

- a. of the commission or intention to commit an offence punishable under the Penal Code; or
- b. of any sudden or unnatural death or death by violence or of any death under suspicious circumstances or of the body of any person being found dead without it being known how that person died; has the duty to give information to a police officer or other person in authority who will inform the officer.

A person giving information in accordance with s. 7(1) will have immunity under civil and criminal law for any damages resulting from the giving of information.

Information relating to the commission of an offence may be given orally or in writing (s. 9 CPA).

2. Investigating Crimes

The Criminal Procedure Act and the Police Force Ordinance are the main Acts regulating the functions and powers of the police. Both the Penal Code and the Evidence Act are also of relevance.

3. Investigation

Section 10 CPA sets out the duty and powers of investigation of the police. If the officer has reason to suspect the commission of offence, either from information received or other way he shall proceed (if necessary) to the spot to investigate the facts and circumstances and take such measures as may be necessary for the discovery and arrest of the offender.

Any investigating police officer may by order in writing require the attendance of any person living within the limits of the station of that police officer or any adjoining station, who appears to be acquainted with the circumstances of the case.

4. Arrest

An arrest is an interference with a person's liberty. For an arrest to satisfy due process:

- The power to arrest must exist; and
- The arrest must be executed in the proper manner.

If these are not satisfied an arrest can be deemed invalid and can be found to be unconstitutional.

Police officers have the power to arrest suspects with and without arrest warrants depending on the offence. Under Section 14 CPA, an officer may arrest any person without a warrant if:

- they commit a breach of the peace in his presence;

- they wilfully obstructs a police officer while in the execution of his duty, or escape or attempt to escape from lawful custody;
- they are in possession anything which may reasonably be suspected to be stolen property or may reasonably be suspected of having committed an offence with reference to such thing;
- they are found lying or loitering in any highway, yard or garden or other place during the night and whom he suspects upon reasonable grounds of having committed or being about to commit an offence or who has in his possession without lawful excuse any offensive weapon or house breaking implement;
- he has reasonable cause to believe a warrant of arrest has been issued;
- he suspects upon reasonable grounds of having been concerned in any act committed at any place out of Tanzania which, if committed in Tanzania, would have been punishable as an offence, and for which he is, under the Fugitive Criminal

Surrender ordinance or the Fugitive Offenders Act, 1881, or otherwise, liable to be apprehended and detained in Tanzania;

- They do any act which is calculated to insult the national emblem or the national flag.

Upon arrest the Police must:

- tell the suspect that he is under arrest; and
- Inform the person of the reason for their arrest (s. 23 CPA).

5. Interview and Statement

Any investigating police officer may examine orally any person supposed to be acquainted with the facts and circumstances. This includes both a suspect and a witness. The officer must inform the person of their duty to answer questions truthfully (s53 CPA).

The officer must reduce into writing any statement made by the person. This includes not only the statement but also any clarifying questions and answers.

The statement can be recorded in full in Kiswahili or in English or in any other language in which the person is examined. The record is to be then shown or read to the person. The person is entitled to an interpreter if they do not understand the language in which it is written. He can also clarify or add to his statement. The statement is to then be signed by him. The police officer recording the statement shall append below each statement recorded by him the following certificate:

“I _____, hereby declare that I have faithfully and accurately recorded the statement of the above named _____”.

A statement by any person to a police officer in the course of any investigation may be used for the abduction and reception of evidence, but not for the purpose of corroborating the testimony of that person in court.

Section 57 CPA sets out the provision for recording interviews. Suspects may also make statements in writing (s. 58 CPA).

However before the recording of the statement, the Police Officer recording it must caution the accused person that his statement may be used in court against him. The statement then made by the accused person and recorded as such is referred to as a caution statement. The caution statements made and recorded under sections 57 and 58 of the CPA differ on two aspects: (a) the format and (b) the source of the initiative to make the statement. Caution statement under section 57 CPA is in the form of questions and answers either fully or partly and is initiated by the Police officer interrogating the suspect. While the caution statement under section 58 is in a form of a statement made by the suspect and it is initiated by the suspect who wishes to make the statement. This difference was pointed out by the Court of

Appeal in Criminal Appeal No. 5 of 2004 (Mwanza), **Ramdhani Salum v. The Republic** (unreported) where Mroso J.A., stated as follows:

“Caution statements, therefore, are not made exclusively under section 58 and Exhibit P5 in this case is not any less a caution statement merely because it was taken under section 57 and not section 58. The circumstances in which the two kinds of caution statements are taken are different. The one taken under section 57 may be as a result either of answers to questions asked by the police investigating officer or partly as

answers to questions asked and partly volunteered statements. The statement under section 58 is a result of a wholly volunteered and unsolicited statement by the suspect.”

6. Time

The period of time available to interview a person is set out under Section 50 CPA, with the basic period available being 4 hours with the ability to be extended in accordance with Section 51 CPA for a further 8 hours.

7. Other Powers

Police also have the power to take fingerprints, photographs, measurements, etc of suspects (s. 59 CPA). They also have the power to hold identification parades (s. 60 CPA).

8. Search and Seizure

An arrested person may be searched by the police before or after arrest (s. 24 CPA).

Police have the power to enter a building or other place to effect an arrest (s. 19 CPA).

The police have the power to stop, search and detain vehicles, stolen goods and offensive weapons (s. 25 CPA).

9. Charge and Detention

Once arrested, suspects are taken a Police station. The officer must decide whether there is sufficient evidence to charge the suspect.

If there is not sufficient evidence the suspect must be released immediately, either on bail or without unless:

- The officer believes there are reasonable grounds for believing that detaining the suspect without charge is necessary to secure or preserve evidence relating to the offence for which he is under arrest; or
- It is necessary to obtain evidence by questioning.

An officer must report those arrested without warrant to the nearest Magistrates within 24 hours or as soon as practicable (s. 33 CPA).

Those taken into custody must be brought before the nearest Magistrates as practicable and in the case of those without a warrant within 24 hours (s. 32 CPA).

10.Rights

The rights of those restrained by the police are set out under Sections 54 and 55 CPA, including the right to communicate with a lawyer, representative or relative and the right to be treated humanely and with respect for their human dignity.

THE PROSECUTION MACHINERY

Prosecution

Public v Private prosecution

Public prosecutions are brought by the Public Prosecutor on behalf of the State. These type of prosecutions will be considered in greater detail.

Private prosecutions are brought by private individuals or private organizations. Every citizen of Tanzania has the right to initiate a private prosecution. Private criminal prosecution may be preferred under section 99(1)

to (4) CPA. The right to bring private prosecutions has been described as a “useful constitutional safeguard against capricious, corrupt or biased failure or refusal of those authorities to prosecute offenders” (**Gouriet v. Union of Post Office Workers [1977] 3 All ER 70**). For the obvious cost-related obstacles, private prosecutions are not as common as public prosecutions.

In order to prevent misuse of this right, there are a number of procedural requirements. The DPP can take over a private prosecution (s. 9(1) (c) NPSA) and discontinue any such prosecution (s. 9(1)(d) NPSA).

It is worth to note that:

- i. Under section 99 CPA the right to conduct private criminal prosecution is limited to cases triable in the Magistrates’ Courts only, namely the District Court and the Resident Magistrate’s Court. Primary Court and High Court are excluded as CPA does not apply in Primary Courts and Magistrates referred to in section 99(1) do not sit in the High Court. (However private criminal prosecution is allowed and is a dominant feature of Primary Courts criminal proceedings).
- ii. To conduct the private criminal prosecution in the District or Resident Magistrate’s Court, prior leave of the magistrate inquiring into or trying the case must be obtained. This results into two-step procedure of leave application and then the main criminal proceedings.
- iii. In applying for the leave, it must be shown that (a) the applicant has reported the matter to the appropriate authority, such as the police, but the same has either refused or neglected to prosecute; (b) there is a prima facie evidence that the alleged crime has been committed.
- iv. In applying for leave one must file the chamber summons, the affidavit and proposed charge sheet.

Reference on private criminal prosecution: **Edmund Mjengwa and 6 others v. John Mgaya and 4 others Criminal Appeal No.18 of 1999, CAT, Mbeya, Lubuva, J.A** (Unreported).

Sixty day rule

The sixty day rule was adopted to minimize delays. The rule requires the final disposal of a case within sixty days from the date of its inception (s. 225(4) CPA).

National Prosecutions Service

The National Prosecutions Service was established by the National Prosecutions Service Act 2008 (“NPSA”).

The Director of Public Prosecutions (DPP)

The DPP is appointed in accordance with Article 59B (1) of the Constitution. The DPP is the head of operations in the Service in relation to prosecutions and coordination of investigation duties (s. 4(3) NPSA).

Role and Function

The functions of the DPP shall be to (s. 9(1) NPSA):

- ✓ decide whether to prosecute or not;
- ✓ initiate, conduct and control prosecutions;
- ✓ take over and continue a prosecution initiated by another person or authority;

The DPP may also:

- discontinue a criminal proceeding brought to the court by another person or authority;
- Direct the police or other investigating organ to investigate and report (note also powers under s. 16 NPSA).

The DPP may also appeal or conduct appeals of all or some court decisions, including taking over appeals from private prosecutions (s. 10 NPSA).

The DPP can also enter a nolle prosequi either by standing in court or informing the court in writing that the proceedings shall not continue, upon which the accused shall be discharged in respect of the charge (s. 91 CPA).

In the exercise of these functions the following principles must be observed (s. 8 NPSA):

- the need to do justice;
- the need to prevent abuse of process; and
- The public interest.

The DPP shall also facilitate the execution of requests from other jurisdictions in relation to extradition and mutual legal assistance (ss. 11-13 NPSA).

The Attorney-General

State Attorneys are appointed in accordance with the Office of the Attorney-General

(Discharge of Duties) Act 2005 (“OAGA”), for the effective performance of the functions of the service (s. 5 NPSA). The Office of the Attorney-General is headed by the Attorney General (s.5 OAGA).

Role and Function

The functions of the Attorney-General shall be (s. 6 OAGA):

- ✓ to appear in proceedings which by law the Attorney-General has a right of audience;
- ✓ to summon any officer in public service to explain any matter which is the subject of litigation by or against the Government;
- ✓ To issue directions to any officer performing legal functions in any Government Ministry, Department or Agency.

The duties of the Attorney-General shall include (s. 8 OAGA):

- to perform the functions of public prosecutions;
- to draft legislative proposals into Bills;
- To advise the Government and Government Ministries, Departments and Agencies.

The Code of Ethics for law officers, state attorneys and legal officers in public service are set out in the Schedule to the OAGA.

Delegated Powers

The DPP has the power to delegate to any Law Officer, State Attorney, officer employed in the Service or any other person, the power to prosecute (s. 10(2) OAGA) or any other power found under s. 91 and Part VII of the CPA. E.g. by Government Notice No.475 of 1986 (R.E 2002), the DPP has delegated the prosecuting powers for offences under the PCCB Act to every legally qualified person working with the PCCB. Also, the

powers have been delegated to various other officers in various departments of the Government to prosecute offences established under the various laws they administer. These include Regional Water Engineer,

Tax Inspectors, Health Inspectors, Registrar of Companies, Immigration Officers, Police

Officers of at least Assistant Inspector rank etc. (See G.N.423 of 1992 R.E 2002).

The DPP has also delegated to state Attorneys In-charge of a region or zone the powers to consent to the prosecution of some of the offences which require the consent of the DPP before they can be prosecuted under Cap 200. (See G.N 191 of 1984 R.E 2002).

Role of the Court in controlling DPP powers

The trial Court has been given powers to control the DPP or officers acting for him (Prosecutors). These powers are safeguards to prevent the possible abuse of the powers of the DPP. A good example is sixty days rule.

The sixty day rule was adopted to minimize delays by prosecution side. The rule requires the final disposal of a case within sixty days from the date of its inception (s. 225(4) CPA).

Role of the Commission of Human Rights and Good Governance (“CHRAGG”)

The CHRAGG was established by the Commission for Human Rights and Good Governance Act 2001.

The work of the Commission is divided into divisions, each headed by a Director, and these are further sub-divided into sections, under Heads of Sections. The divisions relevant to criminal justice are:

- Human Rights (Investigations) Division (DHR);
- Administrative Justice (Investigations) Division (DAJ);
- Legal Services Division (DLS);
- Research and Documentation Division (DRD);
- Public Education and Training Division (DET).

The aim of the CHRAGG is to promote and protect all human rights, duties and principles of administrative justice with the aim of enhancing democracy, the rule of law and good governance.

The functions of the CHRAGG include:

- To promote the protection and the preservation of all human rights and the duties to the society in accordance with the Constitution and the laws of the land;
- To receive, register and investigate complaints from victims of human rights violations and non-compliance with administrative justice principles, provides recommendations towards redressing these violations, and undertakes court action in the event that its recommendations have not been implemented;
- Where necessary, to institute the proceedings in court designed to terminate activities involving the violation of human rights or redress the right or rights so violated, or the contravention of the principles administrative justice;
- To visit prisons and places of detention or related facilities with a view to assessing and inspecting conditions of the persons held in such places and making recommendations to redress existing problems in accordance with the provisions of the Act;
- To advise the government and other public organs and private sector institutions on specific issues relating to human rights and administrative justice;
- To make recommendations relating to any existing or proposed legislation, regulation or administrative provisions to ensure compliance with human rights norms and standards and with the principles of good governance;
- To promote the ratification and accession to treaties or conventions on human right, to which the country is a party and seek harmonization of national legislation as well as monitor compliance with international human rights standards;
- To co-operate with international and regional and other national agencies and institutions competent in the areas of protection and promotion of human rights and administrative justice;
- To suggest priority areas for law reform in order to improve the protection, promotion and enforcement of human rights and good governance.