CRIMINAL LAW AND PROCEDURE IN TANZANIA





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FORMULATION OF CHARGE SHEET OR COMPLAINTS

Although a magistrate has a duty to see the charge is correct, the responsibility of correctness of a charge is that of a public prosecutor.

It is therefore, a public prosecutor’s duty to satisfy himself that the charge he is about to file is correct and that the court in which it is to be filed has jurisdiction to try the offence or inquire into it.

What is a charge sheet?

A charge sheet is a formal statement of an offence as preliminary step to prosecution.

A Charge is a written accusation against accused person of an offence or allegation of an offence which he is said to have committed.

It is a complaint formal drawn up or formal written accusation of an offence is drawn up by the magistrate or police officer signed by as required by the law for the use in criminal trial or in preliminary proceedings (committal proceedings).

A charge sheet is equivalent of ***pleadings*** in civil cases. It contains allegations against the other party. That means the accused party.

It specifies and furnishes necessary details in summary form.

In Tanzania, normally a charge sheet is prepared in our police stations or State Attorney chambers to commence criminal proceedings against the accused persons.

The purpose of a charge sheet

- The purpose of a charge is to inform the accused and the court, with sufficient clarity, the allegations against the accused person.
- To avoid taking the accused by surprise.
- This enable him to prepare the defence.
- It helps the court to issue necessary process, for example summons.
- The charge also help the court to control the proceedings and confine evidence and arguments only to what is in dispute.
- Respect for the rule of law that, any government respect the rule of law should not take people straight to prison without any charge.

-It the principle of law that no person should be convicted of an offence unless the offence is defined in a written law.

In the case of **Musa Mwaikunde v. R,** [2006] TLR 387

The court held that: It is always required that an accused person must know the nature of the case facing him. And this can be achieved, if the charge discloses the essential elements to be alleged.

As rule, charges must be reduced into writing.

Formulation of charges

Formulation of charges is an important part of public prosecutor's duties; and no public prosecutor should be forgiven for his ignorance in formulating charges.

A charge has three parts:

The first gives,

a) Name
b) Age
c) Address and;
d) Tribe or nationality of the accused person.

Formulation of charges

The second contain:

a)The statement of the offence and citation of the law alleged to have been contravened; and

The third part :

Contain the particulars of the alleged offence.

Particulars

Particulars here means a brief but clear statement of the acts or omissions alleged has been done or omitted to be done by an accused person.

The particulars should contain:

a) Date
b) Time
c) Place the alleged offence was committed
d) The act or omission complained of,
e) The name of the victim, if any
f) The property involved, if applicable, and its value, etc.

S.132 of the CPA

SPECIMEN OF A CHARGE SHEET

Name of the accused: Juma s/o Dudu
Age : 26 years
Tribe or Nationality: Ngoni, Tanzanian
Religion : Moslem
Address : House No. 10, Majengo, Dodoma.
Offence, section and law: Robbery contrary to sections 285 and 286 of the Penal Code

Particulars of offence: Juma s/o Dudu on or about 20th June, 1976 at about 4p.m. at Majengo, within the city of Dodoma, Dodoma Region, did steal a brief-case valued at 5,000 shillings, the property of Issa Sumu, and at, or immediately before or after such stealing did use personal violence to the said Issa Sumu in order to steal or retain the said property.

Sgd, John Joseph.
PUBLIC PROSECUTOR

Central Police Station
DODOMA
Date: 3rd July, 1976

From the information about the date of commission of an offence, the accused may wish to put up a defence of ***alibi***; and from the information about the place in which the offence was allegedly to committed, the court will be able to know whether or not it has jurisdiction to try or inquire into the matter.

The description of dates and place where the offence was allegedly committed must, therefore, be

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DEFECTIVENESS OF A CHARGE SHEET

The defectiveness of the charge sheet can hinder the success in prosecution side when the following factors appear with regard of curable and incurable aspect:

I) Wrong citation of the provision
II) Citing non- existing section
III) Citing Repealed section
IV) Duplicity
V) Where there is a grave in particulars
VI) Misjoinder of counts
VII) Inconsistence between charge and evidence

Remedies available when the charge is defective

- Amendment of the charge
- Nolle Prosequi
- Withdraw and re- institution of the charge

BAIL AND BOND

The law relating to bail is founded to the Constitution and Criminal Procedure Act. Under CPA the law relating to bail is founder under s. 148 to 163.

BAIL

Bail refer to the procurement of release from prison of a person awaiting trial or an appeal by the deposit of the security to ensure his submission at the required time to legal authority.

Bail therefore may be defined as an agreement between him and his surety(ies) and the the court that the accused will pay a certain some of money fixed by the Court should he fail to appear to attend his trial on a certain date.

BOND

A bond on the other hand the some of money which the person to be released on his surety binds himself to pay if he fail to appear or attend his trial on the agreed date.

The guiding provision regarding bail are to be found in s. 148(1) CPA.

S. 148(1)

“When a person is arrested with or detained without warrant with an officer in charge in a police station or appears or is brought before a court and is prepared at any time while is in custody of that officer or at any stage of proceedings before that court to give bail the officer or the court, as the case may be, may, subject, to the following provisions of this section, admit that person to bail; save that the officer or the court may, instead of taking bail from that person, release him on his executing a bond with or without sureties for his appearance as provided in this section”

PURPOSE OF BAIL OR BOND

The principle of presumption of innocence is initialized in the Constitution of the Constitution of The United Republic of Tanzania of 1977(as amended) under Article 13(6)(b)

" ***no person charged with a criminal offence shall be treated as guilty of an offence until proved guilty of that offence;"***

- Consequently bail secures a temporary release of accused person upon certain conditions pending the finalization of court proceedings.

The purpose of bail therefore is to help the individual arrested from being presumed guilty prior to his guilty been established or being proved in the court because until that time as his guilty is proved. The person at law is presumed to be innocent.

The purpose of remanding an accused person in custody

The purpose of remanding an accused person in custody is to ensure that he will appear to take his trial and not seek to evade justice by leaving the jurisdiction of the court.

As was shown in the case of ***Jaffer v. R, (1970)HCD***

Remanding an accused person in custody means the curtailment of his/her personal liberty even before he is found guilty. In majority of cases, such condition is considered to be undesirable, and so the courts are empowered to give temporary release from custody by grating bail.

Who may apply for bail?

A bail be said to bear a broad similarities with the ***writ of Habeas Corpus.***

In a principle; any person who is able to show sufficient cause in the matter, may apply the matter of release of any person detained.

That is bail application can be made by:

- An accused himself
- His relative
- His friend or
- His advocate on his behalf

If the accused person is illiterate and unaware on his constitution right to bail, the court has a role to play by informing him his right to bail.

BAIL BY POLICE OFFICER

A person arrested without warrant by police officer must be charged before the court of law within 24 hours of such arrest as provided in s.31 of The Police Force and Auxiliary Service Act, Cap.322 (R.E 2002).

After 24 hours the person is arrested and no charge has been produced against him, he must be set free unless the police officer believe that the offence suspect is the serious one, as provided in s. 64(1) (c) CPA

Where a person is arrested without arrest warrant with a formal charge has been late against him while under the custody of the police but there is insufficient evidence on which to proceed with the charge and therefore further inquiry must be carried out or the offence does not appear to be serious one, the police officer in charge of the police station, may upon that person executing bond with or without sureties to appear before the court if require to release him in bail. s. 64(2) CPA

When a person is admitted to bail by a police officer and no bail money is paid to such police officer instead the police officer may be required to execute bond with or without sureties to appear such police officer at the date to be determine that police officer. S. 31(4) PFASA apply.

Matter relevant to police bail

Under s.65 CPA lays down three categories of matters which the police officer must take to account when the police officer considering on the police bail.

1. Those relating to probability of a person to appear before the court of law, such as his community eyes, residence, employment, circumstances in which the offence was committed, the seriousness of the offence and the strength of the evidence. S. 64 (1)(a) CPA.

Matter relevant to police bail

2. Those matters relating to the interest of a person himself such as, the period that the person may be obliged to spend in custody if the bail is refused. The needs of that person to obtain the legal advice and the need of that for physical protection.

S.64 (b) CPA

Matter relevant to police bail

3. Those relating to protection of the community as such the likelihood of the person interfering with evidence through intimidating witnesses or hindering police inquiring or investigation.

S. 65(c) CPA.

Entitlement to police bail

The liberty of individual is guaranteed or provided under Article 13 of The Constitution of The United Republic of Tanzania of 1977 (as amended) and quesquently a person under police custody who fulfill the conditions lay down by s.66 of the CPA becomes entitled to be granted a police bail.

Conditions for Police bail

i) Undertaking in writing to appear before a specific court at a specific time and place.

ii) Undertaking in writings to observe specific requirements to his conduct while released on bail.

iii) Getting another person acceptable to the police to acknowledge in writing that he is acquinted with him and regard himself as responsible to appear to answer the charge.

iv) The accused himself or another person acceptable to the police deposit with the police the specified sum of money to be forfeited in the event he fails to appear in the court to answer the charge.

In the case of ***Tito Doughas Lyimo v. R,*** [1978] LRT 55

It was held that,

“ bail is a right and not a privilege”

In the case of ***R v. Omari Kigwano,*** [1986]TLR 16

It was stated that:

“where an accused person fails to appear on an appointed date, it preferable not to forfeit the bond of the surety too quickly, it is the best to adjourn and allow the surety time to find the accused if he think he can found him”.

Refusal of police bail

Police bail must not unreasonable refused.

It can only refused for good cause and where a police officer refuse to grant bail must record reasons in writing of such refusal as provided under s. 67(1)and (2) CPA.

BREACHING OF CONDITIONS AND REVOCATION OF POLICE BAIL

Police bail may be revoked and the person arrested, if the person believe that he is absconding or planning to abscond. Provided under s. 68 CPA.

i) Unreasonable failure to comply with an undertaking given by a person as a condition of his release in an offence which on conviction attract a penalty not exceeding the maximum penalty that could be imposed on him upon conviction for the offence in which was arrested and then released on bail. S. 69(1) CPA.

Roles of Public Prosecutor in bail application

The public prosecutor has the following functions or roles in bail application as explained here under:

- **To issue a certificate of notification to the court or police officer as to whether a person should be granted bail or not**. Section 148(4) of the Criminal Procedure Act.
- **To inform the accused of his right to bail**, Every police officer arresting a person reasonably suspected of committing any offence shall inform that person of his right to bail as per section 65(5) of the Criminal Procedure Act.
- **To grant bail to the accused person**. A public prosecutor if he is a police officer can grant police bail as per section 64(1) (a) he has an authority to grant bail to the suspect if he believes that the person has in fact committed no offence or has no reasonable ground to continue holding that person in custody.
- **To grant bail to the accused person**. A public prosecutor if he is a police officer can grant police bail as per section 64(1) (a) he has an authority to grant bail to the suspect if he believes that the person has in fact committed no offence or has no reasonable ground to continue holding that person in custody.
- **To justify the court in refusing bail or in requiring bail of greater amount,** the judge or magistrate, as the case may be, on the circumstances being brought to his notice by a prosecutor or police officer, issue a warrant for the arrest of the accused person and, after giving the accused person an opportunity of being heard, may either commit him to await trial or admit him to bail for same or on an increased amount as the judge or magistrate may think just as provided in section150 of Criminal Procedure Act.

BAIL PENDING APPEAL

Under s. 368(1) (b) of the CPA provide that:

After a person convicted and sentenced to a term of imprisonment enter to an appeal to the High Court of subordinate court which convicted or sentenced that person my for reasonable ground to be recorded by it in writing admit him to bail with or without surety.

When a person is admitted to bail pending appeal. The court shall order the execution of the sentence or order appealed against be suspended pending the hearing of his appeal.

Whether to grant or not to grant bail pending appeal?

In order the court to grant bail pending appeal the following condition should be fulfilled:

a) Whether leave to appeal has been granted.

b) Whether there is a strong likelihood of success of the appeal. This was shown in the case of ***Lamba v. R***, [1958] EA 337

Also in the case of ***Somo v. R,*** [1972] 476

c) Where the risky that the sentence will have been saved by the time is held.

Rights of an accused person

An accused person refers to somebody charged with crime or somebody being charged or alleged with wrong doing in a criminal case.

1. RIGHT TO BE ARRESTED IN A GOOD MANNER

An accused person shall not be subjected to arbitrary arrest or detention, and shall not be deprived of his or her liberty except on such grounds and in accordance with such procedures as established .**Example under Article 13(6) (b) Of the Constitution Of United Republic Of Tanzania as amended from time to time,** state that ‘ *no person charged with criminal offence shall be treated as guilty of the offence until proved guilty of the offence”*.

Also in the Rome statute Article(59) state that, Once the arrest warrants have been issued, the Rome Statute requires that the accused have the opportunity to appear before the courts of the country in which she or he is arrested’’

According to Criminal Procedure Act, person arrested shall be brought promptly before the competent judicial authority in the custodial State which shall determine, in accordance with the law of that State, that:

The warrant applies to that person;

The person has been arrested in accordance with the proper process; and

The person's rights have been respected.

The person arrested shall have the right to apply to the competent authority in the custodial State for interim release pending surrender. Also under **S.10(1) of the Criminal Procedure Act**, state that,*" If from the information received or in any other way a police officer has reason to suspect the commission of an offence or to apprehend a breach of the peace, he shall, where necessary, proceed in person to the spot to investigate the facts and circumstances of the case and to take*

such measures as may be necessary for the discovery and arrest of the offender where the offence is one for which he may arrest without warrant."

2. **Right to call witness or witnesses,** this is one among the rights of an accused person. Where an accused person has indicated that he wishes to call a witness or witnesses on his behalf, such request must be granted. This was pointed out in the case of *Musa s/o Kiumbe v. R*., *(1967)H.C.D.202*
3. **Right to fair trial,** As among the legitimate purpose of the government is to punish those who violate the rights of others through commission of violent or forceful acts such as madder, rape, theft and other offences, in every criminal prosecution the accused shall enjoy the right to speedy and public trial by an impartial jury of the state and district where the crime shall have been committed.
4. **Right of an accused person to defend himself or herself in the Court of Law,** especially during the continuation of criminal proceedings, the accused person has a right to present and make his or her defensive explanations in a whatever way as he or she wishes to do, without being interfered by a Judge or Magistrate. It was stipulated in the case of ***Cheruiyo v.R,*** (1981)EALR

5. **Right to appeal;** . In Tanzania, this right draws its authority and legitimacy from article 13 (a) (6), of the Constitution of the United Republic of Tanzania, This right can also be seen under sections 353 and 359 of the Criminal Procedure Act. Therefore a person cannot be convicted of an offence which he or she didn't commit and it is through this right that a person can get access to fight and seek for a better judgment. ***Maina v.R*****,** (1983)EALR.

6. **Right to medical treatment**. An accused person has got a right to be provided with medical treatment, advice and assistance in respect of an illness or an injury as provided under section 55(3) (a) and (b), of the Criminal Procedure Act[CAP.20 R.E. 2002]

7. Right to bail, According to article 15 (1) of the Constitution of the United Republic of Tanzania of 1977 which state that "Every person has the right to freedom and to live as a person therefore bail is one of the right which can set a person free before has been held criminal offender. Also under section 67(3) of the criminal procedure Act states that a person may request a police officer for facilitate to make an application for bail as the right to an accused person.

In the case of ***DPP V. Daudi Pete***, The accused person was denied right to bail in the trial courts in the appeal the court stated that bail is a basic right of an accused person.

The constitution of the United Republic of Tanzania of 1977 (as amended from time to time)

The Criminal Procedure Act, Cap 20 R.E 2002

[1993] CA TLR22

8. **Right to be informed the ground of the arrest**. Section 23 of the Criminal Procedure Act, Cap. 20 [RE 2002], stresses that at the time of the arrest, the accused person must be told why he is arrested by briefing him the offence he is alleged to have been committed without which can be unlawful arrest which he will be entitled to resist.
9. **Right to cross-examine;** the accused person has the right to cross- examine the prosecutor's witnesses. In the case of *Protas s/o Kagaruki v. R,* [1987] TLR 152 (AC), the appellant was denied the right to cross-examine unsworn evidence of a child of a tender age at the trial court. At the appeal it was held that a matter of trite law, the unsworn evidence of a child could be cross-examined as his evidence as a witness affects the fortunes of the accused.

10. Right to be heard, as shown in the case of *Kufakulala Kajendaje v. R,* "The appellant and one Sophia Mwanangumila were convicted of cattle theft contrary to sections 265 and 285 of the Penal Code and sentenced of 5 years imprisonment by the primary magistrate Court. They successful appealed to district Court and the Director of Public Prosecution further appealed to the High Court. The High Court heard the appeal with the absence of the respondents. Summons was not served because they had escaped after the acquittal on appeal to the district Court. The High Court allowed the appeal and the acquittal by district Court was set aside. At the same time the sentence was enhanced to 8 years imprisonment against each of the respondents. The appellants appealed to this Court arguing, firstly that there was no sufficient evidence to sustain the appellant's conviction; secondly, wrong procedure was adopted by the High Court in hearing the appeal and enhancing the sentence in absence of the appellant."

Held : The effect of section 29(a) (i) provide to the effect that no conviction and sentence shall be substituted for an order of the district Court substituting an acquittal for conviction and no sentence shall be enhanced unless the accused or convicted person, as may be, shall have first given an opportunity to be heard.

11. **Right to be informed when there is change of a magistrate**, as was stipulated in the case of *Josia Zakayo v. R*, ***(****1972) HCD 38*

The appellant was convicted on a number of counts of stealing and forgery. The case was beard by two magistrates, the first of whom was transferred after hearing the evidence of all but one of the prosecution witnesses. The second magistrate exercising his discretion under the provisions of section 196(1) of the Criminal Procedure Code decided not to re-commence the trial. He did not take the plea of the appellant nor did he inform of his right to recall the witnesses who had given evidence before the first magistrate. it was held that however, the succeeding magistrate did not re-commence the trial, he merely continued it from where his predecessor had stopped, and I think that in such a situation he was under no obligation to take a plea of the accused."

JUDGMENT
CONVICTIONS
AND
SENTENCES

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Basic rules of judgments- S.312 of the CPA

Judgment means the expression of the opinion of the court arrived at after due appropriate consideration of the evidence and of the argument presented by the parties before it.

- The court is required to pronounce judgment immediately after the termination of the trial.
- Judgment should mandatory to be pronounced in an open court. The presence of the accused is necessary.
- For the cases involving more than one accused person, the court is empowered to pronounce the judgment notwithstanding the absence of one or more of them in order to avoid delay in the disposal of the case.
- It necessary the judgment for judgment to be in writing at the time of pronouncement.

Basic rules of judgment

- It is the principle that the judgment should be written by the judge or magistrate who heard the case.
- Every judgment must be written in the language of the court. It is English for all courts except Primary courts. In Primary court the language is Kiswahili.
- As the matter of right the accused is entitled to know what the judgment is all about. The pronouncing judge or magistrate must therefore struggle to make the judgment understood by the accused by transition or otherwise.

Contents of a judgment

S . 312 CPA

a) Points for determination

b) Decision thereon

c) The reason(s) of the decision

d) Date

e) Signature of the presiding judge or magistrate

f) (i) in case of conviction

- Specification of the offence charged and the law relevant thereon, and
- The punishment imposed, or

(ii) In case of acquittal:

Statement of the offence the accused is acquitted and

- Direction that the accused be set a liberty forthwith (unless otherwise lawful held)

In general; judgment should contain sufficient particulars to enable higher courts, in case of appeals or revisions to know what facts were prove and how.

Once the judgment has been pronounced the law requires the court on the application of the accused to give a copy of the judgment to him free of cost and without delay. **S 313 (1) CPA**

APPEALS
REVISION
AND
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