
POWERS OF SEARCH AND SEIZURE BY POLICE IN TANZANIA: SHOULD EVIDENCE OBTAINED IN ILLEGAL SEARCH STILL BE ADMISSIBLE?

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ABSTRACT

The Tanzania Police Force is duty-bound to detect and solve crime. The force is statutorily vested with power to ensure that security and safety of citizens reign. Among the powerful tools that enable detecting and solving crime are search and seizure. This paper is set to discuss powers of search and seizure by police officers in Tanzania. In so doing, the paper focusses on analysing the legal and human rights framework. Among the issues this paper attempts to address include the extent to which the legal framework strikes a balance between rights and obligations of owners of premises to be searched. In the same vein, the discussion addresses an aspect of admissibility of evidence obtained in illegal search. An illegal search may occur where police officers conduct search and seizure without complying with legal provisions. All these issues are addressed in the light of a Bill of Rights, which is entrenched in the country's Constitution. The study finds that the provisions of the law governing search and seizure operations abide by the Bill of Rights as entrenched in the Constitution. Finally, the paper concludes that the law on search and seizure will comply with the provisions of the Constitution on protection of fundamental rights and freedoms if police officers strictly adhere to the legal framework on search and seizure. And that the Court of Appeal of Tanzania has been interpreting the legal provisions in the light of striking balance between protecting individuals' fundamental rights and public interests.

Keywords: search, seizure, premises, property, investigation, evidence, human rights, justice.

1. Introduction

Conducting search and seizure forms part of the criminal investigation.¹ In fact, search and seizure are vital aspects in the investigation process. Through search of persons and premises and seizure, investigators collect and gather evidence, which assists in establishing whether a criminal act has been committed, and if so what crime. More so, if the matter goes in court, such evidence is used as exhibits to prove the case against the accused person.

It must however, be understood that the right to enter into premises and conduct search and eventually seize the articles therefrom is a significant invasion of the rights of an individual. That being the case, it must be ensured that any act that interferes with the rights and liberties of a person concerned should be as less as possible and be within the clearly defined provisions of the law.

In view of what has been discussed above, this discussion inquires into the law and practice that govern search and seizure in Tanzania. This is in appreciation of the fact that search and seizure operations serve as important tools in enabling police officers to carry out their mandate of detecting and solving crime efficiently. The discussion also ventures on ascertaining whether search and seizure as carried out by law enforcement agencies comply with the provisions of the country's Bill of Rights.

2. Methodology

This study used doctrinal approach of research in data collection. The study was conducted through involving library research and literature survey. It was a desk-based research work, which reviewed various sources related to the study. The research involved a review and assessment of various documents containing information related to search and seizure information. Those sources included peer-reviewed journals and reviews as found in cited footnotes in the main body of the paper and references part. Other sources in the form of theses, official reports and documents, text books and statutes were referred to.

¹ For some detailed discussion on the concept of "criminal investigation", see Kaniki, A.O.J., 'The Role of Criminal Investigation in Facilitating Asset Recovery in Economic Crime in Tanzania' *Eastern Africa Law Review*, Issue No.1, Vol. 48, June, 2021, pp.172-207. See also Feltoe, G. *et al.*, 'Actions Against the Police: Unreasonable Obstacles to Obtaining Redress' *University of Zimbabwe Law Journal*, 2019, p.270.

3. The Role of Police in Administration of Criminal Justice

Administration of criminal justice is a core function of government, namely to achieve justice so that peace and tranquility prevail. The criminal justice system should therefore be geared to achieve all that. Government institutions are put in place to ensure this public duty is fulfilled.² It entails a list of activities such as detection, apprehension, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders or the collection, storage, and dissemination of criminal history record information.³ All the institutions involved in the administration of criminal justice system should follow a systematic way to accomplish their respective duties.⁴

Being one of state organs responsible for efficient and effective delivery of justice, the Tanzania Police Force (the Force) is conceived to have a central role to play in the administration of criminal justice. The Force is statutorily duty bound to preserve the peace, maintain law and order, investigate crime, prevent and detect crime, apprehend suspected criminals, guard offenders, protect life and property and enforce all laws and regulations with which it is charged.⁵ Looking at these duties, the Force is the one which sets in motion the criminal justice system mechanism. In fact, these duties translate into the role played by the state in securing and maintaining peace and harmony in a society.

As a matter of fact, the Force is the major actor of criminal law in terms of detection and prevention of crime. It is the only law enforcement agency mandated with different laws such as the Criminal Procedure Act⁶, hereinafter referred to as the CPA, and the Police Force and Auxiliary Service Act⁷, to conduct investigation of all kinds of crimes falling under the Penal Code⁸, and other penal laws.⁹ In its bid to take an immediate action in order to save life or

² Buteera, R., 'The Role of the Director of Public Prosecutions (DPP) and the Police in the Administration of Justice', *The Scope Magazine*, (2004)4, p.18.

³ Administration of Criminal Justice Law & Legal Definition, <http://definitions.uslegal.com/a/administration-of-criminal-justice>, accessed on 7th June, 2024.

⁴ Kaniki, A.O.J., *An Examination of the Law and Practice Relating to Asset Recovery in Tanzania*, PhD (Law) Thesis, University of Dar es Salaam, 2020, p.82.

⁵ Section 5(1) of the Police Force and Auxiliary Services Act, Cap. 322 [R.E.2023]. For more details, see Kaniki, A.O.J., "Policing Elections in Tanzania: A Cornerstone of Sustainable Peace and Security", *Eastern Africa Law Review*, Issue 1, Vol. 42, June, 2015, pp.177-178.

⁶ Cap. 20 [R.E.2023].

⁷ Cap. 322 [R.E.2023].

⁸ Cap. 16 [R.E.2023].

⁹ Other law enforcement agencies have been conferred powers to duly conduct investigation but to specific areas in accordance with specific laws. For some details, see Kaniki, A.O.J., "The Role of Criminal Investigation in Facilitating Asset Recovery in Economic Crime in Tanzania", *Eastern Africa Law Review*, Issue1, Vol.48, June, 2015, pp.172-207, p.194.

property or apprehend an offender, the Force undertakes preliminary investigation in order to establish whether a criminal act has been committed, and if so what crime.¹⁰ The Force takes the action upon receiving information or any other way. In the course of conducting investigation, the Police Force carry out search of arrested persons and premises and seize articles connected to an offence. The main concern here is to examine the extent to which legal provisions that govern search and seizure operations by police officers are reflective of human rights provisions. This is because the law that regulates search and seizure operations ought to be closely tied to human rights provisions. As such, police officers are expected to observe human rights provisions when conducting search and seizure.

4. The Concepts of 'Search' and 'Seizure'

Search of persons on arrest and places, and seizure of things obtained therefrom form part of physical evidence the investigators strive to collect and gather. As such, this kind of evidence is very crucial in the criminal investigation. Such a thing or things when found and seized can thereafter be tendered as exhibit(s) if the case goes to court. All this is aimed at furnishing the court with physical evidence, which would help it find the accused guilty. Hence, search and seizure are the most powerful investigating tools in the course of detecting and solving crime. This explains why the need to conduct search and seizure is a crucial part of the investigation and criminal justice system.

Black's Law Dictionary defines search as an examination of a person's body, property, or other area that the person would reasonably be expected to consider as private, conducted by a law enforcement officer for the purpose of finding evidence of a crime. A search cannot ordinarily be conducted without probable cause.¹¹ It is an action of a government machinery to go, look through or examine carefully a place, area, person, object etc. in order to find something concealed or for the purpose of discovering evidence of a crime. Thus, basing on what is provided by Black's Law Dictionary, search involves an examination of man's house or other buildings or premises, or of his person, with a view to the discovery of contraband or illicit or stolen property, or some evidence of guilt to be used in the prosecution of a criminal action for some crime or offence with which he is charged.

¹⁰ See the CPA, section 10(1).

¹¹ Garner, B.A., *Black's Law Dictionary* 11th Ed., 2019, p.1618.

Regarding the term “seizure”, which is an outcome of search, the same has been defined by the Supreme Court of Canada in the case of *R. v. Dyment*¹² as the taking of something by a state authority without the consent of the owner of the item if the individual from whom the item was seized had a reasonable expectation of privacy in it. Similarly, it was held in the South African case of *Ntoyakhe v. Minister of Safety and Security*¹³ that the word 'seize' encompasses not only the act of taking possession of an article, but also the subsequent detention thereof, otherwise the right to seize would be rendered worthless.¹⁴ It is the forceful taking possession of a thing or things by a police officer or an officer from other law enforcement agency through the legal process so that the same is connected with investigation and thereafter taken and presented in court as part of evidence.

Noting from what has been discussed, it may be summed up as follows. When applied to criminal investigation, the term “search” refers to the examination, exploration, looking for or going through or about by a police officer or any other authorised person, to a person’s body, premises or objects, etc. with a view to ascertain to a presence of a thing which is alleged to have been stolen or obtained through an unlawful means or anything which is necessary to the conduct of an investigation into any offence.

With respect to seizure, it is the act of taking possession of property by an officer under legal process. It generally implies taking possession forcibly contrary to the wishes of the owner of the property or who has the possession and who was unwilling to part with the possession. Such a thing or things when found and seized can thereafter be tendered as exhibits if the case goes to court. It is the act or an instance of taking possession of property by legal right or process.¹⁵

Thus, the purpose of conferring the power of seizure of articles to law enforcement officials is to allow them to obtain evidence, which will play an instrumental role in the investigation and prosecution of criminal offences. It is therefore, true that an important part of crime investigation is the obtaining of evidence through the search and seizure of persons and things.¹⁶ Moreover, search and seizure ensure security and safety not only of the person against

¹² [1988] SCJ No 82 66 CR (3d) 348 (SCC).

¹³ 2000 (1) SA 257.

¹⁴ Basdeo, V., “The Constitutional Validity of Search and Seizure Powers in South African Criminal Procedure”, *Potchefstroom Electronic Law Journal*, (2009)12(4), p.313.

¹⁵ Garner, B.A., *op cit.*, p.1631.

¹⁶ Basdeo, V., *op cit.*, p.307.

whose body is searched but also other members of the public. For such a person could injure himself or other persons. In case of collecting and gathering evidence, search and seizure are aimed at furnishing the court with physical evidence which would help it to find the accused person's guilty. It is through the efficient procedure of search and seizure operations that crimes have the potential to decrease exponentially.¹⁷

Search and seizure operations are tools which are designed to help the police carry out their statutory mandate of detecting and solving crime efficiently.¹⁸ In this understanding, search and seizure are fundamental aspects of criminal investigations, allowing law enforcement agencies to gather evidence and enforce the law. Thus, the two form an important part of crime investigation aimed at the obtaining of evidence. This means that search and seizure form an integral part of criminal investigations. They are a fundamental aspect and a significant stage in the process of effective criminal investigation, allowing law enforcement agencies to gather evidence and enforce the law.

However, what matters the most is that the legal provisions that govern the search and seizure process should be followed to the letter. This is so because search and seizure encroach person's privacy and personal security and the right to own property as entrenched in the country's Constitution.¹⁹ In this understanding, search and seizure are required to be conducted within the confines of statutory provisions.

5. Purposes of Search

There are two main purposes for the search to be conducted. Firstly, search of a person is conducted with a view to unearth and obtain physical evidence in respect of the crime to which the suspect or arrested person is alleged to have committed. When conducting a criminal investigation, it may be necessary to recover something connected with the commission of the offence. Evidence connected with the crime may be a thing stolen or unlawfully obtained. Such evidence might not otherwise be available to an investigating officer. This explains the reason why there are well laid down procedure and practice on how to conduct search of arrested person and premises so that the physical evidence obtained therefrom becomes admissible in court. Thus, things like documents or any other portable articles may be discovered from

¹⁷ January, L., "The Constitutionality of Warrantless Search and Seizure Operations", *Pretoria Student Law Review*, (2020)14(2), p.129.

¹⁸ *Ibid.*

¹⁹ See Articles 16 and 24 of the Constitution of the United Republic of Tanzania of 1977, Cap. 2 [R.E. 2023].

objects such as computers, premises or on the body of that person such that had they been remained in his favour if not found. Thus, the need for physical evidence cannot be overemphasised. Personal search and the entry of a person onto another person's property are civil wrongs unless they are justified by statutory authority. In the case of statutory authority, it is imperative that the terms of the statute are complied with, and these, are strictly construed by the court.²⁰

The second purpose for searching a person is that one connected with the protection of his own body, be he an arrested person or a suspect. Apart from protecting himself, the necessity to search him and take any offensive weapons from him is to protect police officers who are attending him while in custody and the public at large. That is to say, search is also conducted for the purpose of protecting the suspect or to avoid injury to other suspects in police custody. Thus, search and seizure aspects form an essential part of crime investigation aimed at the obtaining of evidence. They are a fundamental aspect and a significant stage in the process of effective criminal investigation, allowing law enforcement agencies to gather evidence and enforce the law.

6. Search of a Person on Arrest and Human Rights Concerns

Immediately after lawfully arresting a suspect, a police officer has powers to search and seize any dangerous weapons or anything which is found on him and which may afford evidence to prove the commission of an offence.²¹ The search and seizure as an incident to a lawful arrest may extend beyond the person of the one arrested to include the premises or surroundings under his immediate control. The process of search and seizure involves the search of clothes worn by the suspect or property in his immediate possession or control and in the process seizing anything, relating to the offence, which is found in the course of the search.²²

As noted above, search may be conducted on an arrested person for two main reasons. First is to afford the protection of his own body and other suspects in police custody and police officers attending him while in custody as well as to remove weapons that the arrested person might use to resist or effect an escape. This can be facilitated by taking away from him any articles

²⁰ Hampton, C., *Criminal Procedure*, 3rd Ed., Sweet & Maxwell, London, 3rd Ed., 1982, p.37.

²¹ Sections 24, 27 and 41 of the CPA.

²² *Ibid.* See also Mapunda, B.T., "Personal Freedom and Police Powers in Tanzania", in Peter, C.M. and Juma, I.H. (Eds.), *Fundamental Rights and Freedoms in Tanzania*, Mkuki na Nyota Publishers, Dar es Salaam, 1998, p.145.

such as weapons, belts, rings, and suchlike which, apart from enabling him to do harm to others and damage to property, can also help or aid him to escape from custody. Second, search of arrested person is conducted in order to obtain and preserve evidence connected with the crime. Evidence connected with the crime may be a thing stolen or unlawfully obtained. Search of persons is conducted in order to obtain and preserve evidence connected with the crime such person is alleged to have committed. Evidence connected with the crime may be a thing stolen or unlawfully obtained. The articles that form the evidence are except the necessary wearing apparel, found upon him kept in safe custody.²³ A person being searched has a right to demand a receipt for all of the items seized or found on him or her during the search. The person conducting the search should place his or her signature on the receipt to make it valid.²⁴

- **Search of Women**

The law requires that a suspect who is under police custody should be treated with respect. His dignity should be observed. It is against statutory law and the Constitution to subject him to cruel, inhumane or degrading treatment. In case of searching an arrested woman, the CPA provides for the mode. According to the Act, whenever it is necessary to cause a woman to be searched, the search should be made by another woman with strict regard to decency and order.²⁵ A male police officer is not allowed to search the person of a woman suspect (and presumably vice versa). If he attempts to do so, a woman is deemed to have a right to prevent the search of her person and to use force if necessary.²⁶ In practice, a woman has to be searched by a woman police or other respectable woman designated for the purpose and out of public sight. She is deemed to have a right to prevent the search of her person and to use force if necessary.²⁷

7. Search of Premises: The Legal and Human Rights Framework

What matters the most during such of premises and seizure of objects found therefrom is that the legal provisions that govern the search and seizure process should be followed to the letter. This is so because search and seizure encroach person's privacy and personal security and the

²³ See secs 24, 27 & 41 of the CPA.

²⁴ Kapinga, W.B.L., "The Police Force and Human Rights in Tanzania", *Third World Legal Studies*, (1990) 9 P.46. Available at: <http://scholar.valpo.edu/twls/vol9/iss1/2>.

²⁵ Section 26 of the CPA.

²⁶ Kapinga, *op cit.*, p.49.

²⁷ *Ibid.*

right to own property as entrenched in the country's Constitution.²⁸ In this understanding, search and seizure are required to be conducted within the confines of statutory provisions. Just a remark, search and seizure are the most powerful investigating tools in the course of detecting and solving crime. This explains why the need to conduct search and seizure is a crucial part of the investigation and criminal justice system.

Search and seizure in Tanzania are basically governed by the law namely, the CPA. The Act basically provides under sections 38 to 45 the general legal framework for search and seizure operations. The purpose of those provisions of the CPA is to facilitate the search, seizure and prosecution of evidence that may be used in a trial.²⁹ The Police Force and Auxiliary Services Act³⁰ complements what is provided for under the CPA on search and seizure.

It needs to be appreciated that crime has transformed itself to become transnational, sophisticated and dangerous to the extent of violating human rights of citizenry.³¹ Among the measures of addressing crime is investigation, which involves, among other things, search and seizure. It is well settled that countries the world over should enact penal laws, which strike a balance between protecting national security and basic human rights. Tanzania is not an exception. The country has a Bill of Rights, which was entrenched in the Constitution in 1984 and became operative in March 1988. With the entrenchment of the Bill of Rights in the Constitution of the United Republic of Tanzania of 1977, the country is obliged to observe fundamental rights and freedoms of citizens.³² One of the fundamental issues to be addressed is the extent to which the provisions of the CPA and any other laws complementing the Act regarding search and seizure operations are human rights compliant. With effect from when a Bill of Rights became operative in Tanzania, all laws are enacted in such a way that they are not in conflict with any provision of the Constitution.

According to the CPA³³ and the Police Force and Auxiliary Services Act,³⁴ premises to be searched include any building, vessel, carriage, box, receptacle, place or place, vehicle, boat or

²⁸ See Articles 16 and 24 of the Constitution of the United Republic of Tanzania of 1977, Cap. 2 [R.E. 2023].

²⁹ *Joseph Charles Bundala v The Republic*, (Criminal Appeal 15 of 2020) [2021] TZCA 3532 (21 December 2021).

³⁰ Section 35(1) the Police Force and Auxiliary Services Act, Cap. 322 [R.E. 2023].

³¹ Kaniki, A.O.J., "Transnational Crime and National Security: Issues and Options for Tanzania" *National Defence College Journal* (2015), July, p.29.

³² See Part III of Chapter One of the Constitution on Basic Rights and Duties covering articles 12 to 32.

³³ Cap. 20 [R.E. 2023], section 25.

³⁴ Section 35(1) of the Police Force and Auxiliary Services Act, Cap. 322 [R.E. 2023].

aircraft.³⁵ The general legal position is that search of premises should only be conducted on the authority of a warrant of search. A police officer can only conduct search without warrant when exercising specific powers conferred upon him by the law. Thus, searches of premises can be conducted with or without a warrant. The following part of the discussion goes into detail.

7.1 Search of Premises with Warrant

The term “search warrant” may be defined as an order in writing issued by a police officer in charge of a police station commanding any police officer subordinate to him to conduct a search for specified house or other premises, for personal property allegedly believed to have been stolen, unlawfully obtained or used in the commission of crime and seize the same, when found, to be tendered in court as exhibits. Search of premises with warrant and seizure of articles obtained therefrom are governed by section 38 of the CPA.³⁶ Equally true, similar provisions of the law are provided for by the Cybercrimes Act³⁷ in respect of searching for electronic evidence. The Act empowers police officer in-charge of a police station or a law enforcement officer of a similar rank to enter into any premise and search or seize a device or computer system. Such police officer does so upon being satisfied that there are reasonable grounds to suspect or believe that a computer system may either be used as evidence in proving an offence or is acquired by any person as a result of an offence.³⁸

Section 38 of the CPA empowers a police officer in charge of a police station to search or issue a search warrant to another police officer under him to search the building, vessel, carriage, box, receptacle or place as the case may be for the purpose of investigation.³⁹ The section provides the procedures of conducting search. This is in instances where a search is not an emergency one.⁴⁰ It is apparent that according to section 38 of the Act, no search of a premises

³⁵ See Massawe, A.A.F., *The Law of Criminal Procedure*, T.M.P. Book Department, Tabora, 1980, p.36.

³⁶ Section 35 of the Police Force and Auxiliary Services Act Cap. 322 [R.E. 2023], which complements what is provided for under the CPA regarding search of premises with warrant.

³⁷ Cap. 443 [R.E. 2023].

³⁸ *Ibid.*, section 31.

³⁹ See section 35 of the Police Force and Auxiliary Services Act, Cap. 322 [R.E. 2023] and section 22(1) of the Economic and Organised Crime Control Act, Cap. 200 [R.E. 2023] which have similar wording.

⁴⁰ Section 38 of the Criminal Procedure Act, Cap. 20 [R.E.2023] should be read together as one with Police General Order (PGO) 226 para 2(a) (c) (d) and (e) which governs the procedures of search. It should be noted that the Police General Orders (PGOs) of the Tanzania Police Force, 3rd Edition, 2021, the Government Notice No. 315/2021 published on 26/3/2021, were made by the Inspector General of Police under section 7 of the Police Force and Auxiliary Services Act, Cap. 322 [R.E.2023]. The PGOs bind all members of the Force. According to the case of *Joseph Charles Bundala v. The Republic*, (Criminal Appeal 15 of 2020) [2021] TZCA 3532 (21 December 2021), the purpose of the PGOs is to provide directives to the police force personnel that will help and guide them in the proper conduct of their day-to-day duties and responsibilities as members of the police force and each member is expected to follow them.

shall be effected without one; search warrant, two; the presence of the owner of the premises, occupier or his near relative at the search premises, three; the presence of an independent witness who is required to sign to verify his presence and four; issuance of a receipt acknowledging seizure of property.⁴¹ A police officer who conducts search and seizure must make sure that he fulfils all these procedural requirements failure of which renders the search and seizure illegal. These legal requirements are aimed at safeguarding the constitutional right to dignity and privacy of a person. More so, the purpose of requiring a police officer who conducts search and seizure to abide by the law is to avoid possibility of fabrication of evidence by planting things subject of a criminal charge.⁴²

Therefore, where a police officer conducts search and seizure without search warrant and other requirements as enumerated under section 38 of the CPA, the said search and seizure are illegal.

It is further insisted that the police officer should have reasonable grounds for believing that there is a need to enter into the premises and conduct a search. As such, a search warrant should only be issued where, on the basis of the information from reliable sources to the satisfaction of the police officer in charge of the police station that there are reasonable grounds to believe that the search will result in the discovery of certain articles which are believed on reasonable grounds to be concerned in the commission of a crime.

According to section 39 of the CPA, things connected with offence include anything with respect to which an offence has been or is purported on reasonable grounds to have been committed; anything as to which there are reasonable grounds for believing that it will afford evidence of the commission of any offence; and anything as to which there are reasonable grounds for believing that it is intended to be used for the purpose of committing any offence.

Before entering into any premises to effect search and seizure of relevant evidence, a police officer who is assigned to conduct the search should record in writing, as far as possible, the reasons for believing that search would lead to discovery of such evidence. The discovered evidence should be in relation to properties, which are subject of the offence; stolen or embezzled and other proceeds, or fruits of the offence; or used or intended to be used as the

⁴¹ *Samweli Kibundali Mgaya v. the Republic*, (DC Criminal Appeal 166 of 2019) [2020] TZHC 471 (19 March 2020).

⁴² See the case of *Badiru Mussa Hanogi v. Republic*, (Criminal Appeal No. 118 of 2020) [2021] TZCA 237 (9 June 2021).

means of committing an offence.⁴³ As such, the police officer conducting the search must have a warrant duly and properly issued. This is the most important condition for a search to be regular and one, which is human rights compliant.

7.1.1 Why Securing a Search Warrant?

Section 38 of the CPA, which governs search and seizure operations emphasises that a search warrant has to be issued where it is not an emergency situation. The search warrant authorises a police officer to conduct the search. The need of warrant on the part of a police officer who conducts search cannot be overstated. It is emphasised that a search warrant should be in place before a police officer enters into the premises to be searched. This is due to the fact that search and seizure by police officers may result in an unjustified intrusion of people's property and privacy, which are protected by the country's Constitution. Thus, a search warrant serves as a mechanism, which strikes a balance between the protection of individuals' rights with public interest in compliance with enforcement of penal laws. It is an important mechanism to balance the right to privacy of an individual with the state's interest in compliance with law and order.⁴⁴ The right to privacy needs to be jealously guarded because it guarantees that all persons should be free from unreasonable, arbitrary, or unlawful searches or seizures of their persons or effects.⁴⁵

Thus, a search warrant is considered to be a controlling mechanism for providing safeguards against violation of such rights. The search warrant, apart from safeguarding the rights of the individual through clearly defining the purpose of the search and the articles that may be seized, it also safeguards the police from any potential civil liability that might ensue as a result of the search.⁴⁶ That means for a search into private premises to be a lawful search, it must be conducted by either an officer in charge of a police station or another police officer with a search warrant as per the provisions of section 38(1) of the CPA and PGO No. 226 paragraphs 2(a), which provide safeguards against unchecked abuse by investigatory agencies seeking to protect individual citizens' rights to privacy and dignity enshrined in the Constitution of the

⁴³Philippine National Police (2011) *Criminal Investigation Manual (Revised)*, Directorate for Investigation and Detective Management, Quezon City, 2011, p.4-15.

⁴⁴ Nortje, W., "Warrantless Search and Seizures by the South African Police Service: Weighing up the Right to Privacy versus the Prevention of Crime" *Potchefstroomse Elektroniese Regsblad/ Potchefstroom Electronic Law Journal* (2021)24, p.15.

⁴⁵Srividya, P. and Hanna, S.S., "A Critical Analysis on Legality of Search and Seizure – International Overview", *Indian Journal of Integrated Research in Law* (Volume II) I, p.1181.

⁴⁶ January, *op cit.*, p.134.

United Republic of Tanzania. Police officers must observe rights of owners of premises when conducting search and seizure as enshrined in the Constitution of the United Republic of Tanzania, 1977⁴⁷. The Constitution provides under Article 12(1) that:

“Every person is entitled to recognition and respect for his dignity.”

Equally important, the Constitution guarantees the right to privacy and personal security when stating under Article 16 that:

“16.- (1) Every person is entitled to respect and protection of his person, the privacy of his own person, his family and of his matrimonial life, and respect and protection of his residence and private communications.

(2) For the purpose of preserving the person's right in accordance with this Article, the state authority shall lay down legal procedures regarding the circumstances, manner and extent to which the right to privacy, security of his person, his property and residence may be encroached upon without prejudice to the provisions of this Article.”

In view of the above, no police officer should enter private premises and conduct search unless he either holds a warrant or is empowered to enter under section 42 of the CPA during emergency.

7.1.2 The Form, Contents and Duration of a Search Warrant

While acknowledging the importance attached to a search warrant, which is a written authority that allows a person to enter into the premises of another and carries search and seizure, there is need to delve into the contents thereof and the duration in which it remains in force. Undoubtedly, the warrant is one which authorises a police officer assigned to conduct the search. That being the case, therefore, it is expected under normal circumstances to find the name of the officer carrying out the search therein. The warrant should also have to prescribe the premises with tolerable accuracy in which the search is going to be conducted. Furthermore, it should also contain the things, which are searched for. It was held in the case of *Mohanlal v. Republic*⁴⁸ that it is impossible to establish that a particular search was conducted under the

⁴⁷ Cap. 2 [R.E.2023].

⁴⁸ (1957) EA 355.

authority of a warrant without providing the contents of the warrant. That means, therefore, if the warrant does not contain these prerequisites, then it is undoubtable fact that the search will be irregular.

According to sections 45(1) and 112(1) and (3) of the CPA, every search warrant remains in force until it is executed or until it is cancelled by the issuing authority namely, a police officer in charge of a police station.

7.1.3 Hours to Conduct Search

The CPA provides under section 40 that a search warrant may be issued and executed on any day, including Sunday, and may be executed between the hours of sunrise and sunset. However, the court may, upon application by a police officer or other person to whom it is addressed, permit him to execute it at any hour.⁴⁹ PGO No.226 (2) (b) illustrates this legal position stipulated under the CPA by stating that if the search is to be made between the hours of sunset and sunrise, the Magistrate shall be asked to authorise the execution of the warrant at any hour of the day or night.

7.1.4 Rights of Owners of Premises to be Searched

It is expected that the fact that the search is properly carried out, an individual's right to privacy as provided for in the Constitution of the United Republic of Tanzania 1977⁵⁰ is not infringed. The most important consideration should be to ensure that all the laid down legal procedures regarding the circumstances, manner and extent to which the right to privacy, security of his person, his property and residence may be encroached upon are without prejudice to the provisions of the Constitution.⁵¹ Thus, when a police officer conducts search on the premises of another person, he should comply with a legal condition of being armed with a search warrant. It is the right of the owner of the premises to see and read the warrant. That is to say, where a search warrant is to be executed, the person whose premises are to be searched has the right to demand to see and to read the warrant. After reading in the warrant, the owner of the premises will know who is before him. That he is talking to the public official and not just any other person. Moreover, he will be acquainted with the contents thereof and thus, know what

⁴⁹ See also the case of *Ayubu Mfaume Kiboko and Another v. The Republic*, (Criminal Appeal No. 694 of 2020) [2022] TZCA 121 (17 March 2022).

⁵⁰ Cap. 2 [R.E.2023].

⁵¹ Article 16 of The Constitution of the United Republic of Tanzania of 1977, Cap. 2 [R.E. 2023].

the police officer is up to. It was held in the case of *Isaac s/o Reuben v. The Queen*⁵² that if on demand he is not given the opportunity to do so is entitled to obstruct and forcibly to resist the search. Harbord, J. of the then Her Majesty the High Court of Tanganyika stated that:

“The accused was charged on 2 counts: willfully obstructing a police officer in the due execution of his duty, and willfully obstructing a person lawfully charged with the execution of a warrant. The facts as found by the magistrate were that the complainant (police sergeant) was charged with a valid warrant to search accused’s house; but would not permit the accused to see more of it than his (accused’s) name upon it. Accused refused to permit entry of his premises unless he was allowed to read the whole warrant, and he continued to argue and to stand in the way. The complainant, a police sergeant, dragged him out of the way and proceeded with his search.

When a warrant is to be executed it is essential that the warrant be produced and shown to the person upon whom it is to be executed, if he desires it, in order that he may satisfy himself as to the precisely what warrant authorises those who are acting mimically to him to do, and that he may satisfy himself that on the face of it is a valid warrant. In the case of search warrant he will also wish to know precisely what items of property the warrant authorises the police to search for and seize if found. All these are the elementary right of the subject, and the law would be harsh and arbitrary indeed if it did not concede them. The mere showing of a piece of paper with one’s name on it, even coupled with the knowledge that the piece of paper bearing one’s name is a printed form of Search Warrant, cannot disentitle one from demanding to see the whole document and to read it for oneself, to satisfy oneself that it is not merely a search warrant form, but in fact a search warrant.”

According to the above decision of the Court, the owner of the premises to be searched has a right to be allowed to read and understand contents of the search warrant before he permits entry of the premises. Therefore, the police officer who is in possession of a warrant should avail it to the person named therein so that he reads it.

⁵² II TLR (R) 84.

7.1.5 Obligations of Owners of the Premises

The law expects that an officer who is about to conduct search and seizure ought to get all the available assistance as opposed to frustration from the owner of the premises. It is on this spirit that under the CPA, it is the duty of persons in charge of premises to allow free entry and exit to a person who has lawful authority to search. The Act states under section 43(1) that:

“Whenever any building or other place liable to search is closed, any person residing in or being in charge of that building or place shall, on demand of the police officer or other person executing a search warrant, and on production of the warrant, allow him free ingress into, afford all reasonable facilities for a search inside and allow him free egress from it.”

Thus, if the owner had been shown the search warrant and had enough opportunity to see and read it hence got acquainted with its contents, then he has legal obligation of putting ajar the doors of his premises, say a house, and let the officer conduct the search uninhibitedly. That means the owner should provide any means, which would facilitate the officer to conduct the search thoroughly well. For instance, unlocking the fastened doors, removing some materials, which may prevent the officer to conduct the search thoroughly well, etc. Likewise, such concern on part of the owner of premises should be extended to instances where the search is conducted during emergencies as allowed and regulated by the CPA.⁵³ When search is conducted during emergencies, normally no search warrant is issued. Likewise, owners of the premises should allow way out for the police officers once they are through with the search operation. It is a legal obligation of owners of premises to be searched or persons in charge of closed places to allow ingress and egress.⁵⁴

7.1.6 The Role of Independent Witnesses

The law requires that independent witnesses should be present when search is carried out. The law and practice demand that there should be at least two independent witnesses during the search operation.⁵⁵ According to the case of *Malik Hassani Suleiman v. SMZ*⁵⁶, in executing a search warrant it is mandatory that selection of search witnesses should ensure that they are

⁵³ Cap. 20 [R.E. 2023], section 42.

⁵⁴ *Ibid.*, section 43(2).

⁵⁵ See PGO 226(18)(b).

⁵⁶ [2005] T.L.R. 236.

respectable inhabitants of the locality. They should be, as far as practicable, selected from the neighbourhood of the place to be searched. Before the commencement of the search, witnesses should be explained the object of the search and the articles for which it is made. The search should be conducted in their presence and the list of things seized should be signed by witnesses. The independent witnesses should sign certificate of seizure to verify their presence.⁵⁷ The occupant of the place or his representative should be allowed to be present during the search and a copy of the search list signed by the witnesses should be given to him.

It needs to be appreciated that the presence of an independent witness at the premises where search and seizure are conducted cannot be underestimated. His presence at the searched premises may assure the court that the search was properly and fairly conducted. Thus, an independent witness plays a watch-dog role to both police officers and owners of premises to be searched. The fact that he should be present throughout the search, he is expected to be in a position to give supporting evidence if anything incriminating is found and to refute allegations that the search was roughly carried out and property damaged.⁵⁸ He also provides safeguards to the owner of the premises against some malpractices of the police officers who carry out search and seizure. His presence at search premises scares some unscrupulous police officers who conduct search from fulfilling their undisclosed ill-motives. In case of any doubt as to how the search and seizure were conducted, he can be called to give evidence in court “that the search was properly and fairly conducted and that no question of ‘planting’ any property on the premises can be raised.”⁵⁹ Possibility of planting seized items cannot be overruled where independent witnesses are not invited in the premises during the search. In the case of *Adriano Agondo v. The Republic*⁶⁰, where the items at issue were single handedly retrieved by a police officer from a ceiling roof the Court made the following remark:

“...it is beyond question that the civilian witnesses were not engaged in the search on the ceiling roof which was, apparently, an exercise conducted exclusively by the police. To this end, we cannot overrule the possibility that the items might have been fraudulently planted and, as was rightly urged by the

⁵⁷ See section 38(3) of the CPA.

⁵⁸ See PGO 226(18)(b).

⁵⁹ *R. v. Rajabu s/o Athumani* (1967) HCD 449 Hamlyn J.

⁶⁰ The Court of Appeal of Tanzania at Tabora, Criminal Appeal No.29 of 2012 (Unreported), pp. 11-12 of the judgment. See also the case of *Samweli Kibundali Mgaya v. The Republic*, (DC Criminal Appeal 166 of 2019) [2020] TZHC 471 (19 March 2020).

learned State Attorney, the retrieved items cannot be legitimately linked to the appellant to justify the invocation of the doctrine of recent possession.”

Noted above, an independent witness is important because he is able to provide independent evidence. That ability stems from the fact that he is not an interested party in the search and seizure that take place. In order for him to be able provide independent evidence, an independent witness to a search must be credible, or the whole exercise would be rendered suspect.⁶¹ Above all, a witness to a search must be a respectable person of the locality within which the search is conducted.⁶²

7.1.7 Seizure of Property: The Need to Issue Certificate of Seizure

In terms of section 38(3) of the CPA, a police officer who conducts search is required to prepare and issue certificate of seizure.⁶³ It means that the officer in charge of the search, upon seizure of a thing or things, is required by law to issue a receipt acknowledging the seizure of that thing, bearing the signature of the owner or occupier of the premises or his near relative or other person for the time being in possession or control of the premises, and the signature of witnesses to the search, if any.⁶⁴ The need for issuing certificate of seizure, that is issuing receipt to the seized items and obtaining signature of the witnesses, is to make sure that the property seized came from no place other than the one shown therein. The catchword here is that the purpose of issuing the receipt is to ensure that the property seized came from no place other than the one shown in the receipt.⁶⁵

In view of the above, the law requires the officer who conducts search and seizure to issue receipt, officially known as certificate of seizure. The receipt acknowledges the detention and seizure of the thing obtained at the searched premises. The provision of section 38(3) of the CPA requires the certificate to be filed and signed at the scene of crime on the same day the exhibit is seized.⁶⁶ The certificate is a statutory document which should conform to the

⁶¹ *Shabani Said Kindamba v. The Republic*, (Criminal Appeal No. 390 of 2019) [2021] TZCA 221 (2 June 2021).

⁶² *Malik Hassani Suleiman v. SMZ* [2005] T.L.R. 236.

⁶³ Section 38(3) the CPA should be read together with section 35(3) of the Police Force and Auxiliary Services Act Cap. 322 [R.E.2023]. See also the case of *Barton Raphael Mangula @ Baraka Mang'ita v. The Republic*, (DC Criminal Appeal 40 of 2022) [2023] TZHC 20006 (4 August 2023).

⁶⁴ *Ayubu Mfaume Kiboko and Another v. The Republic*, (Criminal Appeal No. 694 of 2020) [2022] TZCA 121 (17 March 2022). See also section 35(1) of the Police Force and Auxiliary Services Act, Cap. 322 [R.E. 2023].

⁶⁵ *Geofrey Kitundu @ Nalogwa & Another v. Republic*, (Criminal Appeal No. 96 of 2018) [2021] TZCA 3 (2 February 2021).

⁶⁶ *Bakari Lemboto Kapela and Another v. The Republic*, The High Court of Tanzania, The District Registry of Dodoma at Dodoma DC, Criminal Appeal No.87 of 2022 (Unreported).

requirements of the law. Under section 38(3) of the CPA, a seizure certificate is a statutory form that is why the enabling provision must be cited in those forms.⁶⁷ It should bear the signatures of the officer in charge of the search, the owner or occupier of the premises or his near relative or other person for the time being in possession or control of the premises, and the signature of witnesses to the search, if any.⁶⁸ Receipt of acknowledging the seizure given to the owner or occupier of the premises or his near relative or other person for the time being in possession or control of the premises should be a duplicate from the original.⁶⁹

7.2 Search Without Warrant

The CPA provides an exception to the general rule that a search warrant is required when a police officer searches premises and seizes items. In acknowledgment of certain circumstances giving rise to an exigency sufficient to justify a search without warrant the law provides a leeway under section 42 of the CPA. The section provides for the circumstances under which police officers can conduct search without a search warrant. It means that, much as the law requires police officers to be armed with search warrant before entering the premises to be searched, there are certain circumstances where warrantless search and seizure operations are justified. The circumstances are in appreciation of the fact that delay due to obtaining a search warrant is likely to defeat the purposes and objects of the search thereby prejudicing the investigation of a case. It is on this ground that the law empowers police officers to enter into premises and conduct search without warrant under exigent circumstances, provided that conditions set out in the law are fulfilled. The CPA, which governs conducting of searches without warrant especially in emergencies under section 42, dispenses with search warrant requirement. The Act provides for the circumstances under which search and seizure may be conducted during emergencies. That is, it empowers police officer to conduct emergence search under exigent circumstances that would cause a reasonable person to believe that entry into premises, vessel or vehicle or any other timely action was necessary to prevent physical harm to the officers or other persons, the loss or destruction of relevant evidence or anything connected with an offence, the escape of the suspect or some other consequence improperly

⁶⁷ *The Republic v. Halifa Bwire Hassan and Three Others*, (Economic Case 16 of 2021) [2021] TZHCCED 5559 (1 September 2021).

⁶⁸ PGO 226(2)(d).

⁶⁹ *Ibid.*

frustrating legitimate investigative efforts of the police or any investigative agency.⁷⁰

It is apparent that a police officer may search any premises for anything necessary for investigation into an offence if it cannot be obtained where there is undue delay, after recording the grounds of his belief and specifying the thing for which the search is to be made. The action taken by a police officer in the circumstances plays an instrumental role in preventing, detecting or solving crime. Thus, a search without warrant can be carried out by a police officer in an emergency and whatever item found can be seized if the police officer concerned believes on reasonable grounds that it is necessary to do so in order to prevent the loss or destruction of anything connected with an offence.⁷¹

It is necessary that the search or entry is made under circumstances of such seriousness and urgency as to require and justify immediate search or entry without warrant.⁷² However, “reasonable grounds for believing” is a question for the court to decide, having regard to all the circumstances on which the officer bases his belief.⁷³

Where a search is conducted without warrant, the police officers are bound to permit the occupant or some other person on his behalf, to attend at the search.⁷⁴ The reason behind is to provide safeguards against possible abuse such as planting items related to criminal acts by unscrupulous police officers into the searched premises in order to satisfy their ill-motives. On completion of the search, a police officer who conducted the search should prepare a search report at the scene. The report should give details of all the articles seized. A copy of the report should be handed to the occupier of the searched premises.⁷⁵ The search report should state clearly that nothing other than the articles enumerated on the report were taken away and that no damage was done. The police officer conducting the search, occupier of the premises searched, the local leader or two responsible inhabitants should sign the report.⁷⁶

Furthermore, it must be born in mind that the search cannot be said to have been conducted as an emergency measure if the police had ample time to make arrangements within the dictates

⁷⁰ See the case of the case of *Barton Raphael Mangula @ Baraka Mang'ita v. The Republic*, (DC Criminal Appeal 40 of 2022) [2023] TZHC 20006 (4 August 2023).

⁷¹ *Ayubu Mfaume Kiboko and Another v. The Republic*, (Criminal Appeal No. 694 of 2020) [2022] TZCA 121 (17 March 2022).

⁷² *Ibid.*

⁷³ PGO 226(3)(a).

⁷⁴ PGO 226(6).

⁷⁵ PGO 226(19).

⁷⁶ PGO 226(20).

of the law.⁷⁷ The ample time enables police officers to prepare a search warrant, arrange for witnesses, and the like. The fact that a police officer upon receiving information that moves him to reasonably believe that it is necessary for him to conduct search but has enough time to make arrangements, such as securing a search warrant, emergency situation does not arise.

8. Police Officers to be Liable for Prosecution Over Unreasonable Search

It must be appreciated at the outset that, given the imminent danger and threats posed by crime, the Legislature sees the urgent need to enable law enforcement machinery to be ready at any time to take action immediately, especially under state of emergency.⁷⁸ However, despite such urgent need to act, police officers are urged to observe the law whenever maintaining the security and safety of citizens. This includes abiding by legal provisions of the CPA that govern search and seizure operations. The police officers should carry out search and seizure basing on reasonable grounds to believe that it is necessary to do so on premises in order to locate particular articles that are connected with the commission of an offence. Thus, any police officer who does not observe the law risks to be prosecuted for unreasonable search and seizure. Unreasonable search and seizure encompasses vexatiously and without having reasonable grounds for doing, ordering, authorising or conducting search and seizure⁷⁹.

9. Effects of Illegal Search: Is Evidence Obtained in Illegal Search Admissible?

Whether legal or illegal, search touches one's personal right. That is right of privacy, which is guaranteed by the Constitution of United Republic of Tanzania, 1977. So, it is expected that whenever search is carried out the laid down procedures as provided by the law are complied with. When those laid down procedures are followed, the search is said to be legal. It is legal in the sense that it was carried out according to law. The legality hinges on that the officer who conducts search should be armed with a search warrant; the search is to be conducted in the presence of the owner, occupier or a near relative who will be required to sign a certificate to acknowledge the search and seizure, if any, and the presence of an independent witness.

⁷⁷ *Ayubu Mfaume Kiboko and Another v. The Republic*, (Criminal Appeal No. 694 of 2020) [2022] TZCA 121 (17 March 2022).

⁷⁸ Kaniki, A.O.J., "Disruption of Terrorist Financing in Tanzania: An Analysis of the Legal and Human Rights Framework", *International Diplomatic Review Journal*, (2023) 2(1), pp.52-92, p.80.

⁷⁹ PGO 226(2)(e) provides that police officers shall be liable for prosecution over unreasonable search.

It can however, transpire that due to various reasons the search is conducted without adhering to the provisions of the law namely, section 38 of the CPA. That search is illegal. The illegality is in the sense that one, the search is conducted while no search warrant is issued in respect of the conducted search, two; the absence of the owner of the searched premises, three; no independent witness is called to witness the conducted search, and four; no receipt is issued to the owner of premises, occupier or his near relative at the search premises, to acknowledge the seizure of the articles. It is well settled that the evidence should not be obtained in a manner that violates the provisions of human rights. Where evidence is obtained in contravention of the law is illegal. The illegality emanates from the fact that it is against the spirit of the constitution, statutory law, case law and even international conventions.⁸⁰ The illegally obtained evidence as a result of illegal search is equally obtained through human rights violations. It violates rights to privacy and personal liberty. Whereas it is universally recognised that all persons, whether innocent or guilty, and irrespective of the nature or seriousness of the crime charged, are entitled to search and seizure privacy rights. The right should be safeguarded regardless of the gravity of the crime in question.⁸¹

The issue is whether the illegality affects the credibility of the search thereby rendering evidence obtained in such illegal search inadmissible.

According to section 169 of the CPA the trial court has absolute discretion to admit and act on illegally obtained evidence upon complying with the conditions prescribed therein.⁸² The court is vested with powers to exclude evidence illegally obtained. However, this depends upon the absolute discretion of the court. Section 169(1) of the CPA provides that:

“Where, in any proceedings in a court in respect of an offence, objection is taken to the admission of evidence on the ground that the evidence was obtained in contravention of, or in consequence of a contravention of, or of a failure to comply with a provision of this Act or any other law, in relation to a person, the court shall, in its absolute discretion, not admit the evidence unless it is, on the balance of probabilities, satisfied that the admission of the evidence would

⁸⁰ Getanda, M.C., “Illegally Obtained Evidence: Which Way for Kenya Courts?”, *International Journal of Liberal Arts and Social Science* (2019) 7(1), pp.60-61.

⁸¹ Srividya and Hanna, *op cit.*, p.1181.

⁸² *Joseph Charles Bundala v. The Republic*, (Criminal Appeal 15 of 2020) [2021] TZCA 3532 (21 December 2021).

specifically and substantially benefit the public interest without unduly prejudicing the rights and freedom of any person.”

According to sub-section (2) of section 169, while exercising its discretion as stated above in sub-section (1), the court should have regard to the following factors: (a) the seriousness of the offence in the course of the investigation of which the provision was contravened, or was not complied with, the urgency and difficulty of detecting the offender and the urgency or need to preserve evidence of the fact; (b) the nature and seriousness of the contravention or failure; (c) the extent to which the evidence that was obtained in contravention of in consequence of the contravention of or in consequence of the failure to comply with the provision of any law, might have been lawfully obtained; and (d) all the circumstances of the offence, including the circumstances in which the evidence was obtained.

The burden of satisfying the court that evidence obtained in contravention of the law should be admitted in proceedings lies on the party who seeks to have the evidence admitted.⁸³ Where the court excludes evidence on the basis of illegality it should explain the reasons for such decision.⁸⁴ The provision of section 169 of the CPA as enumerated above was considered and interpreted by the Court of Appeal of Tanzania in the case of *Nyerere Nyague v. The Republic*⁸⁵. In considering whether the appellant had a right to challenge admissibility of illegally obtained evidence under section 169 of the CPA, the Court stated that:

“It follows in our view therefore that the admission of evidence obtained in the alleged contravention of the CPA is in the absolute discretion of the trial court and that before admitting or rejecting such evidence, the parties must contest it, and the trial court must show that it took into account all necessary matters into consideration and is satisfied that, if it admits it, it would be for the benefit of public interest and the accused's rights and freedom are not duly prejudiced. In other words, there must be a delicate balancing of the interests of the public and those of the accused. It is not therefore correct to take that every apparent contravention of the provisions of the CPA automatically leads to the exclusion of the evidence in question. The decision of the trial court on such matters can only be faulted if it can be shown, that the admission or rejection of such

⁸³ The CPA, section 169(3).

⁸⁴ *Ibid.*, section 169(5).

⁸⁵ (Criminal Appeal Case 67 of 2010) 2012 TZCA 103 (21 May 2012).

evidence was objected to and that it did not properly exercise its judicial discretion, or at all, in rejecting or admitting it.”

It means that although evidence illegally obtained may be received in evidence, it must be so received after observing the requirements provided at section 169(1) and (2) of the CPA.⁸⁶ According to the provisions of section 169 of the CPA, the party who is against the illegally obtained evidence must object its admission when it is sought to be tendered in a trial court. Otherwise the court may admit it and such party, according to the case of *Joseph Charles Bundala versus The Republic*⁸⁷, shall have no right to complain about its admissibility at the appeal stage.

Thus, whether illegally obtained evidence is admissible depends on the absolute discretion of the trial court as provided under section 169 of the CPA.

In view of what has been discussed above, it is argued that there is no automatic rejection of the evidence that might have been extracted from a suspect through illegal means like torture.⁸⁸ The argument is tenable because section 169 of the CPA gives courts absolute discretion not admit the evidence unless it is satisfied that the admission of the evidence would specifically and substantially benefit the public interest without unduly prejudicing the rights and freedom of any person. This is in line with the observation that courts are guided by the following principles when dealing with illegal evidence obtained through human rights violations:

“When courts are faced with the question of the admission of evidence obtained through human rights violations, they may use the reliability principle, because improperly obtained evidence may be as reliable as lawfully obtained evidence and may have a bearing on the innocence or guilt of an accused. The courts may use the deterrent principle for the purpose of punishing a person who obtained the evidence improperly. Alternatively, the courts may also follow the protective principle, whereby an accused does not suffer a disadvantage

⁸⁶ *The Director of Public Prosecutions v. Doreen John Mlemba*, (Criminal Appeal 359 of 2019) [2021] TZCA 482 (14 September 2021).

⁸⁷ (Criminal Appeal 15 of 2020) [2021] TZCA 3532 (21 December 2021).

⁸⁸ Nangela, D.J., “Institutional Democratic Practice, Human Rights and the Police Force’s Accountability in Tanzania”, *LST Law Review* (2017) 2(1), p.76.

because of evidence obtained through human rights violations by investigators.”⁸⁹

The above arguments are in line with striking a balance between protecting fundamental rights of both members of the public and accused persons on one side and ensuring justice is done on the other. As such, the trial court is left with absolute discretion to ensure that while deciding to admit or not to admit the illegally obtained evidence, it precludes either party of the case from a substantial benefit from such misconduct. After all, much as the enforcement of human rights provisions as enshrined in the Constitution is not always absolute, limitations thereof need to be observed for the public good.⁹⁰

10. Are Search and Seizure in Tanzania Human Rights Compliant?

The discussion responds to the question on whether search and seizure operations are compliant to human rights provisions. Looking at the provisions of sections 38 to 45 of the CPA, which provide the legal framework in terms of procedures to be followed during search and seizure operations, there is a reflection of observance and protection of fundamental rights and freedoms of citizens. They set out requirements for a valid search and seizure with a view to providing protection to the person whose body or premises are searched. A police officer who conducts search and seizure must make sure that he fulfils all these procedural requirements failure of which renders the search and seizure illegal. As such, this legal framework insists on observing and protecting human dignity which is guaranteed by the Constitution.

The Court of Appeal of Tanzania has played an active role in ensuring that the legal framework, which governs search and seizure operations is strictly observed. The Court has never hesitated to declare search and seizure illegal in several cases when some police officers abused their powers conferred to them by law to conduct search and seizure. Such abuses could be seen in instances where they disregarded the requirements to be fulfilled before search and seizure operations are to be carried out. Another instance is where police officers did not have reasonable grounds to believe that it was necessary for them to do search and seizure. In view of all these procedural requirements, it may be concluded that the provisions of the law

⁸⁹ Nanima, R.D., “The Legal Status of Evidence Obtained through Human Rights Violations in Uganda”, *PER / PELJ* (2016)19, p.2. The author makes reference to John, D.T. and Sarah, J.S., *The Internationalisation of Criminal Evidence: Beyond the Common Law and Civil Law Traditions* (2012), pp.154-155.

⁹⁰ Kaniki, A.O.J., “Is the Forfeiture of Criminally Acquired Property in Tanzania Compliant with the Constitution?” *African Human Rights Law Journal*, (2021) 21, pp. 358-387, pp.550-551.

governing search and seizure operations abide by the Bill of Rights as entrenched in the Constitution.

11. Conclusion

In conclusion it is argued that there is need for police officers to strictly abide by and adhere to laws, regulations, rules and the like to the letter in order to avoid possibilities of encroaching individual freedoms, liberties and rights as provided for by the Constitution is of critical importance. They should guarantee the secured environment in the course of maintaining law and order. The upholding of human rights provisions will depend on them when they execute search and seizure according to law and not otherwise. On the other hand, the public as a whole should note that police officers are essentially there to protect them and their property. In order for the police officers undertake this statutory responsibility, they need co-operation whenever and wherever possible rather than frustration from the public. It has been reminded that:

“The police play a crucial role in ensuring the security and safety of citizens. For this purpose, they are vested with coercive power and with authority to impose limitations on an individual’s rights when this is necessary for the protection of others or for the promotion of the general welfare.”⁹¹

The fact that crime causes social, material and bodily ill-being to a point of creating fear in the minds of the people that may result in impairing their very existence, citizens need to be assured by the government of their security and safety.⁹² If citizens are fearful of crime, they retreat in doors to safety and concede victory to criminals. Hence, they lose confidence to the Police Force and the Government as a whole.⁹³ Therefore, what should be emphasised at this end is that co-operation between the public and the Police Force should be reigning at all corners of the country.

⁹¹ Ntanda Nsereko, D.D., “The Police, Human Rights and the Constitution: An African Perspective,” *Human Rights Quarterly* (1993)15, pp.465-484, p.482.

⁹² Kaniki, A.O.J., “Disruption of Terrorist Financing in Tanzania: An Analysis of the Legal and Human Rights Framework”, *op cit.*

⁹³ *Ibid.*