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The Right to Bail as a Human Right: Analysing Its Protection Under Mainland Tanzanian Laws and Practices

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*Right to Bail,
Presumption of Innocence,
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Due Process.*

This study explores the right to bail in Mainland Tanzania as a fundamental human right embedded in both domestic and international legal frameworks. It examines the constitutional foundation of bail, primarily under Articles 13(6)(b) and 15 of the Constitution of the United Republic of Tanzania, which guarantee the presumption of innocence and personal liberty. The research highlights the statutory provisions of the Criminal Procedure Act [Cap 20 R.E 2023], especially Section 151, which categorises offences into bailable and non-bailable, and identifies restrictive conditions that often conflict with constitutional guarantees. Through analysis of landmark case law and scholarly commentary, the paper critiques the discretionary and often inconsistent application of bail by law enforcement and the judiciary. It reveals that pre-trial detention is frequently overused, leading to prison overcrowding and the infringement of individual rights. The study highlights the need for legal reforms to align bail laws with constitutional mandates and international human rights standards, advocating for a clearer recognition of bail as a right rather than a privilege. It concludes by recommending constitutional and legislative amendments to ensure fair and equitable access to bail for all accused persons in Tanzania.

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INTRODUCTION

Bail as a human right is grounded in the principles of justice, fairness, and equality. It recognises that individuals who are accused of crimes are presumed innocent until proven guilty. Therefore, the right to seek bail is considered an essential aspect of human rights and the rule of law in many legal systems, including Tanzania's.

Bail is a fundamental component of criminal justice systems worldwide, providing individuals with the opportunity to regain their freedom while awaiting trial. When the accused is brought before the court, the court may either remand the accused in custody or release such accused person on bail. There are two kinds of applications of bail, such as police bail and court bail. In Tanzania, the right to bail is enshrined in the Constitution of the United Republic of Tanzania of 1977, according to article 13 (6) (b)¹ provides for the presumption of innocence of every person charged with a criminal offence. Consequently, bail secures a temporary release of an accused person upon certain conditions pending the finalisation of court proceedings.

According to Article 15 (1)² and (2) of the Constitution of the United Republic of Tanzania, which provides for the right of bail, while states that "Every person has the right to freedom and live as a free person". Consequently, every accused person is entitled to bail as a matter of Constitutional right in Tanzania.

The right of bail has been a part of our jurisprudence since 1984, when it was put in the Bill of Rights in our Constitution. In 1979, Mwasium, J, held that bail is a right and not a privilege. In the case of **Tito Douglas Lyimo Vs Republic (1979) LRT No 55**³, Mwesiumo J observed that;

"Bail is a right rather than a privilege unless the court is convinced that to grant it will defeat the ends of justice as a failure of the accused to appease before the court to stand his trial or that by granting it the accused would tamper with the investigations or with exhibits which are to be tendered before the court at the time of trial"

However, Mwalusanya, J, held that bail should be taken as seriously and treated as a right and not privilege in the case of **Daudi Vs Republic**⁴ when he declared that provision of Section 148 (5) (d)⁵ of the Criminal Procedure Act is unconstitutional because it is conflicts with the Article 13 (6) (b)⁶ which provides for presumption of innocence of accused person until the court of law declare that person is guilty

The guiding provision regarding bail is to be found in section 151 (1)⁷ of the Criminal Procedure Act, which states that;

"When any person is arrested or detained without warrant by an officer in charge of a police station or appears or is brought before a court and is prepared at any time while in the custody of that officer or at any stage of proceeding before that court to give bail the officer or the court, as the case may be subjected 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".

Therefore, Tanzania is a signatory to various international human rights treaties, including the African Charter on Human and Peoples' Rights (ACHPR) (1981) and the International Covenant on Civil and Political Rights (ICCPR) (1966). Both instruments recognise the right to personal

¹ The Constitution of the United Republic of Tanzania of 1977

² The Constitution of the United Republic of Tanzania of 1977

³ (1979) LRT No 55

⁴ The High Court of Tanzania at Mwanza, Miscellaneous Criminal Cause No 80 of 1989

(Unreported) cited from H., Kijo-Bisimba & C.M, Peter (supra), 204-239

⁵ The Criminal Procedure Act (Cap 20 RE 2023)

⁶ The Constitution of the United Republic of Tanzania of 1977

⁷ The Criminal Procedure Act (Cap 20 RE 2023)

liberty and the presumption of innocence, principles that are central to the issue of bail.

However, despite these international commitments, the Tanzanian bail system has been criticised for not fully adhering to these standards. For example, the overuse of pretrial detention and the inconsistent application of bail laws may undermine the right to a fair trial and the right to liberty, as guaranteed under these international instruments. Article 9⁸ of the ICCPR states that “it shall not be the general rule that persons awaiting trial shall be detained in custody.” This emphasises the presumption of innocence and the importance of granting bail except under exceptional circumstances. Article 6⁹ of the ACHPR, this article guarantees the right to personal liberty, which includes the right to be granted bail, subject to certain conditions.

Purpose of the Study

- To analyse the Legal Framework Governing Bail in Tanzania, this study aims to carefully examine the laws that regulate how bail is granted in Tanzania. It focuses on key legal instruments like the Criminal Procedure Act, the Economic and Organized Crime Control Act, and the Constitution. The analysis will include understanding what the law says about who qualifies for bail, under what conditions, and which court has jurisdiction. It also looks at how the law defines bailable and non-bailable offences, and whether the bail system supports the constitutional right to liberty and fair trial.
- To investigate the Practical Challenges Faced by Accused Persons in Accessing Bail, many people in Tanzania, especially those who are poor or unaware of their legal rights, struggle to get bail even when the law allows it. This study looks at real life problems such as delays in processing bail, inability to meet bail conditions, lack of legal representation, and discrimination. It also explores how certain groups, like the marginalised, youth, or political detainees, may face unfair treatment in bail proceedings.
- To Identify Inconsistencies or Restrictions Within Bail Laws That May Violate Human Rights Principles, although the Tanzanian Constitution recognises bail as a right, other laws sometimes place heavy restrictions on it, especially for economic crimes or drug-related offences. This study will identify where the laws are unclear, overly strict, or inconsistent with the right to be presumed innocent. It will analyse whether these restrictions comply with constitutional guarantees and international human rights standards, such as the International Covenant on Civil and Political Rights (ICCPR).
- To evaluate the Role of Judicial Discretion in granting or Denying Bail, Judges and magistrates have the power to decide whether or not to grant bail. This power, called *judicial discretion*, must be used fairly and consistently. The study will assess how this discretion is applied in practice, whether courts use it to uphold justice or if it leads to arbitrary or unequal decisions. It will also review important case law to understand how courts interpret and apply bail laws.
- To Propose Legal and Procedural Reforms to improve the Bail System in Tanzania, based on the research findings, the study aims to suggest changes in law and practice that can make the bail system more just and accessible. These reforms may include reducing unnecessary restrictions, ensuring access to legal aid for bail applications, standardising bail procedures across courts, and strengthening judicial training on human rights. The ultimate goal is to promote a legal system where bail serves its true purpose,

⁸ The *International Covenant on Civil and Political Rights* of 1966

⁹ The *African Charter on Human and Peoples' Rights* of 1981

protecting individual liberty without compromising public safety.

HISTORICAL BACKGROUND OF BAIL LAWS IN MAINLAND TANZANIA

Colonial Era

Tanzania, formerly Tanganyika, was under British colonial rule from the early 20th century until its independence in 1961. During this period, the legal system, including bail laws, was based on English common law, which heavily influenced the justice system in the region. The laws governing bail were primarily codified in the Criminal Procedure Ordinance of 1937, a colonial-era statute. While this ordinance allowed for bail, it was restrictive in nature, primarily based on the severity of the offence and the discretion of the magistrate.

The status of bail to the accused person was addressed elaborately by Justice Wilson in the case of **Abdullah Nassoro Vs Rex**¹⁰. This case involved a charge of assault causing actual bodily harm arising out of the clash between Arabs and Britches in Tabora. The accused was appealing against the decision of the first-class magistrate of the District Court, who refused an application for bail pending trial.

The Criminal Procedure Ordinance, 1937¹¹: This ordinance granted magistrates the power to deny or grant bail. However, it gave judges broad discretion without clear guidelines, resulting in a legal framework that often favoured the state over the individual's right to bail.

Bail was typically denied for individuals involved in offences viewed as politically or socially threatening to the colonial government. This practice continued throughout the colonial era, where pretrial detention was used as a tool to control perceived threats to colonial rule¹².

Post-Independence Period to the Present

After independence in 1961, Tanzania inherited many legal frameworks from the colonial era. The Criminal Procedure Act (CPA) of 1959 remained in force after independence. It allowed bail but continued to emphasise judicial discretion in determining whether an individual should be granted bail or not.

The Criminal Procedure Act, 1985¹³, established a clearer legal framework for the granting of bail. The law had given judges the discretion to grant or deny bail, with the caveat that certain serious offences (e.g., murder, treason) were non-bailable. However, the Act still allowed judges to make decisions on bail based on factors such as the nature of the offence, the likelihood of the accused fleeing, and the risk of interference with witnesses.

The Criminal Procedure Act [Cap 20 R.E 2023],¹⁴ which provides statutory restrictions to bail, the principle of restriction to the power of the court to grant bail are to be found in Section 151¹⁵ of the Criminal Procedural Act. The restriction on granting bail falls under two categories. Firstly, offences which are by law declared to be non-bailable and secondly, offences in respect of which bail may be restricted under certain circumstances, although they are ordinarily bailable. Which contravene Article 13(6)(b)¹⁶ of the Constitution of the United Republic of Tanzania, which guarantees the right of an accused person to be granted bail. It asserts the presumption of innocence until the court of law proves guilty, which aligns with international human rights norms

Since British colonial period to date bail in Tanzania has been regarded as a right for accused person and not privilege which stated with the case of **Tito Douglas Lyimo Vs Republic**¹⁷,

¹⁰ (1921-1952) 1 TLR (R) 289

¹¹ The Criminal Procedure Ordinance, 1937

¹² Kavuma, K. (2011). International Human Rights and Bail Law in Tanzania: An Analysis of Bail as a Human Right. *African Human Rights Journal*, 15(2), 204-220.

¹³ **The Criminal Procedure Act, 1985**

¹⁴ The Criminal Procedure Act (Cap 20 RE 2023)

¹⁵ The Criminal Procedure Act (Cap 20 RE 2023)

¹⁶ The Constitution of the United Republic of Tanzania of 1977

¹⁷ (1978) LRT no 55

Mwaseumo, J held that bail is a right and not privilege to an accused person, unless the court is convinced by concrete evidence emanating from the prosecution that to grant bail would fail justice

METHODOLOGY

This study adopts a qualitative legal research methodology grounded in doctrinal analysis and supported by case law review and legal commentary. The research design is structured to critically examine statutory provisions, constitutional mandates, judicial decisions, and international legal instruments governing the right to bail in Tanzania.

The primary method employed is doctrinal legal research, which involves analysing legal texts, statutes, and case law to interpret and evaluate the legal principles and frameworks surrounding the right to bail. Key Tanzanian legal instruments examined include the Constitution of the United Republic of Tanzania (1977), the Criminal Procedure Act (Cap. 20 R.E. 2023), the Economic and Organized Crime Control Act (Cap. 200 R.E. 2023)¹⁸, and the Penal Code (Cap. 16 R.E. 2023)¹⁹. Relevant subsidiary legislation and court practice directives were also considered.

To evaluate the judicial application and discretion in bail matters, the study incorporates case law analysis. Landmark Tanzanian cases such as *Tito Douglas Lyimo v Republic*, *Bhagwanji Kakubhai v Republic*, and *Shabell v Republic* are examined to illustrate how courts interpret and apply bail-related provisions in practice. These cases are evaluated for consistency, fairness, and alignment with constitutional principles and international human rights norms.

The research further utilizes secondary sources such as legal textbooks, academic journal articles, commentaries by Tanzanian legal scholars, and human rights reports published by institutions like the Legal and Human Rights Centre (LHRC).

These sources help provide context, critique legal developments, and support comparative analysis.

Additionally, international legal instruments, particularly the International Covenant on Civil and Political Rights (ICCPR) and the African Charter on Human and Peoples' Rights, are referenced to assess Tanzania's compliance with global human rights standards concerning the right to bail.

The study does not employ empirical or statistical methods, as it is primarily focused on legal interpretation, critical evaluation of legal norms, and comparative analysis. The objective is to reveal gaps in the Tanzanian bail framework and propose reforms based on legal reasoning and human rights principles.

LEGAL CHALLENGES OF BAIL LAWS IN MAINLAND TANZANIA

These statutory restrictions or limitations on bail are provided in the Criminal Procedure Act [Cap 20 RE 2023] under Section 151²⁰, which provides that some offences are bailable and others non-bailable offences. The court should refuse to grant bail to an accused person who has provided certain statutory restrictions some offences such as murder, treason and armed robbery, etc.

A party from those statutory restrictions, also Judicial through the court, may ask questions whether the accused may interfere with the investigation, as shown in the case of **Bhagwaji Kakubai Vs Republic**²¹. The court may look at the other side, whether the accused is likely to commit other offences after providing bail, as shown in the case of **John Mswani and Others Vs Republic**,²² the court held that the possibility of the accused person committing other offences while he is on bail should be considered before granting bail. This is a minor reason because no person should be penalised for mere human fear unless there is sufficient ground to prove those fears.

¹⁸ Economic and Organized Crime Control Act [Cap 200 R.E 2023]

¹⁹ Penal Code [Cap 16 R.E 2023]

²⁰ The Criminal Procedure Act (Cap 20 RE 2023)

²¹ TLR 143

²² (1970) HCD No 50

Prisoner overcrowding is a direct result of this legal and constitutional. LHRC in its reports 2008 and 2009 shows that overcrowding is caused by a large number of remand prisoners²³. This is a grave and potentially calamitous situation because it puts in jeopardy the very ethics of human rights and the rule of law entrenched in Part II of our current Constitution of the United Republic of Tanzania of 1977.

VARIOUS LEGAL SCHOLARS DISCUSSED BAIL LAWS IN MAINLAND TANZANIA

Kavuma, K. (2017)²⁴ in his work titled International Human Rights and Bail Law in Tanzania: An Analysis of Bail as a Human Right. *African Human Rights Journal*, 15(2), 204-220. He stated that the right to bail is a critical aspect of human rights, as guaranteed by the International Covenant on Civil and Political Rights (ICCPR) and the African Charter on Human and Peoples' Rights (ACHPR), both of which Tanzania is a signatory. He argued that bail laws in Tanzania should align with international human rights standards, which emphasise the right to personal liberty and the prohibition of arbitrary detention.

Chirwa, D. (2017)²⁵ in his work titled Bail Denial in Tanzania: Human Rights Violations and Alternatives to Detention. *Journal of African Human Rights Studies*, 4(2), 178-195. She critiques the practice of denying bail, especially in cases of political dissent or opposition figures, noting that such practices violate both the right to be presumed innocent and the right to a fair trial. She argued that Tanzanian courts sometimes overlook the human rights implications of pre-trial detention, leading to prolonged detention of

suspects without trial, which violates international human rights standards.

Ogwen, P. (2019)²⁶ in his work titled Pre-trial Detention and Bail: A Critical Examination of Tanzania's Approach. *East African Journal of Criminal Law*, 25(1), 101-120. He examines the overuse of pre-trial detention in Tanzania and its negative impact on detainees, particularly those who are unable to afford bail. He stated that the inability to pay bail often results in lengthy stays in overcrowded prisons, which constitutes a violation of the right to be free from cruel, inhuman, or degrading treatment.

Nyanduga, M (2012)²⁷ in his work titled The Right to Bail in Tanzania: A Constitutional Perspective. Dar es Salaam University Press states that it has emphasised the importance of bail laws as fundamental safeguards in ensuring the presumption of innocence and the right to personal liberty. He stated that bail is a constitutional right under the Constitution of the United Republic of Tanzania, according to Article 13 (6) (b) and Article 15, which prohibits arbitrary detention. The Criminal Procedure Act (CPA), which governs criminal procedures in Tanzania, also contains provisions on bail, particularly in section 148.

Tenga, T. (2016)²⁸ in his work titled Challenges in the Bail System: The Tanzanian Experience. *Law and Justice Quarterly*, 13(3), 98-115. He stated that the criminal justice system in Tanzania is burdened by inefficient procedural delays, often caused by the lack of sufficient judicial officers, inadequate resources, and corruption in the judicial process. These delays result in significant backlogs, which increase the time an accused

²³ LHRC (2008), Tanzania Human Rights Report, 2007, LHRC & ZLSC, Dar es Salaam, Tanzania, p. 108

²⁴ **Kavuma, K. (2011)**. *International Human Rights and Bail Law in Tanzania: An Analysis of Bail as a Human Right*. *African Human Rights Journal*, 15(2), 204-220.

²⁵ **Chirwa, D. (2017)**. *Bail Denial in Tanzania: Human Rights Violations and Alternatives to Detention*. *Journal of African Human Rights Studies*, 4(2), 178-195.

²⁶ **Ogwen, P. (2019)**. *Pre-trial Detention and Bail: A Critical Examination of Tanzania's Approach*. *East African Journal of Criminal Law*, 25(1), 101-120.

²⁷ **Nyanduga, M. (2012)**. *The Right to Bail in Tanzania: A Constitutional Perspective*. Dar es Salaam University Press.

²⁸ **Tenga, T. (2016)**. *Challenges in the Bail System: The Tanzanian Experience*. *Law and Justice Quarterly*, 13(3), 98-115.

person spends in detention, even when they have been granted bail.

OBJECTIVES OF THE STUDY

This study will be conducted with the following significance in mind:

- To help identify challenges that Tanzania currently experiences in the utilisation of the constitutional right to bail.
- To inform society on the fundamental right to bail and its constitutional significance in a modern democratic society.
- To accord stakeholders in the criminal procedure system with informed analysis of the constitutional difficulties caused by section 151(4) (5)²⁹ of the Criminal Procedure Act.
- Help point a way forward for future reform of both the constitution and criminal procedure law in Tanzania.

BAIL LAWS AS HUMAN RIGHTS

Bail, in the context of human rights, refers to the principle that individuals accused of a crime should have the right to be released from custody until their trial, this principle is grounded in the idea that pre-trial detention should not be used as a form of punishment, but rather, it should be reserved for exceptional circumstances where there is a real risk of harm to the community or where the accused is a flight risk.

Tanzania, like many countries, is a party to the International Covenant on Civil and Political Rights 1966³⁰ and the Universal Declaration of Human Rights 1948³¹, which have enshrined fundamental rights, including the right to personal liberty, in its Constitution. In practice, bail is considered a human right, with specific legal protections to ensure that individuals who are

accused of crimes are not subjected to unnecessary detention.

Constitutional Rights: Article 13 (6) (b)³² and Article 15 of the Constitution of the United Republic of Tanzania of 1977 provides for the protection of human rights and freedom, including protection from arbitrary arrest and detention. This reflects the recognition of liberty as a fundamental human right before their trial.

The Universal Declaration of Human Rights (UDHR) 1948 under Article 9³³, the African Charter on Human and Peoples' Rights (ACHPR) 1981 under Article 6³⁴ and the International Covenant on Civil and Political Rights (ICCPR) 1966 under Article 9³⁵ set out the standards for the protection of human rights related to personal liberty and pre-trial detention.

According to the International legal standard of human rights, no one should be subject to arbitrary arrest or detention, and the right to a fair trial and the presumption of innocence are integral to the right to liberty.

LEGAL FRAMEWORK GUIDING BAIL

International Law and Human Rights Framework

Tanzania is a party to several international human rights instruments that impact its bail laws and practices, notably the International Covenant on Civil and Political Rights (ICCPR) 1966 and the African Charter on Human and Peoples' Rights (ACHPR) 1981. These conventions require that:

Article 9³⁶ of the ICCPR guarantees the right to liberty and security of the person and affirms that anyone arrested shall be entitled to take proceedings before a court to challenge the legality of their detention, which includes the right to apply for bail.

²⁹ The Criminal Procedure Act (Cap 20 RE 2023)

³⁰ International Covenant on Civil and Political Rights 1966

³¹ The Universal Declaration of Human Rights 1948

³² The Constitution of the United Republic of Tanzania of 1977

³³ The Universal Declaration of Human Rights 1948

³⁴ African Charter on Human and People Rights 1981

³⁵ The International Covenant on Civil and Political Rights 1966

³⁶ The International Covenant on Civil and Political Rights 1966

Article 6³⁷ of the ACHPR, affirms the right to personal liberty and ensures protection from arbitrary detention, emphasising that individuals should not be detained without sufficient legal grounds and that their cases should be heard within a reasonable time.

Domestic Legal Framework

The Constitution of the United Republic of Tanzania of 1977

The Constitution of the United Republic of Tanzania of 1977 provides that no person charged with a criminal offence shall be treated as guilty of the offence until proven otherwise by a court of competent jurisdiction.

The Constitution is the supreme law of the country and contains provisions that ensure the right to personal liberty and protection from arbitrary detention, which are fundamental to the granting of bail. Key provisions include:

Article 13(6)(b)³⁸ which state about the presumption of innocence of every person charged with a criminal offence. Consequently, bail secures a temporary release of an accused person upon certain conditions pending the finalization of court proceedings.

Article 15(1)³⁹ this Article ensures that a person's liberty may not be restricted unless there is a lawful reason for detention, which aligns with the right to be released on bail pending trial.

The Criminal Procedure Act, [Cap 20 RE 2023]

The Criminal Procedure Act, especially sections 151, provide the most detailed statutory framework for bail in Tanzania. It outlines the legal principles, procedures, and conditions under which bail may be granted or denied in criminal cases. The Criminal Procedure Act incorporates

both general provisions on bail and specific rules for different types of offences.

In terms of Section 151 (5)⁴⁰ of the Criminal Procedure Act, a person charged with the following offences may not be granted bail by a police officer or a court. The offences falling in that fact category are;

Murder, treason, armed robbery, defilement, Illicitly trafficking in drugs against the Drugs and Control and Enforcement Act, Terrorism against the Prevention of Terrorism Act, Money laundering contrary to Anti Money Laundry Act, An offence involving heroin, cocaine, prepared opium, opium poppy, poppy straw, coca plant, coco leaves, cannabis sativa or cannabis resin (Indian hemp), Methaqualone, or any other narcotic drug or psychotropic substance, where the value of such drug has been certified by the Commissioner for National Co-ordination of Drugs Control Commission, as exceeding ten million shillings.

Therefore, the parliament has enacted various pieces of legislation to address the issue of bail in Tanzania. These pieces of legislation include the Economic and Organized Crimes Control Act, Cap. 200 R.E 2023 (EOCCA), the Appellate Jurisdiction Act [Cap. 141 (AJA), the Magistrates' Courts Act, Cap. 11 (MCA) and the Criminal Procedure Act (Cap 20 R.E 2023), Third Schedule to the MCA. The AJA regulate the grant of bail pending appeal. In addition, the Chief Justice promulgated Rule 11(2) (b) of the Tanzania Court of Appeal Rules,¹ empowering the Court of Appeal to grant bail to appellants pending determination of their appeals.

³⁷ The **African Charter on Human and Peoples' Rights 1981**

³⁸ The Constitution of the United Republic of Tanzania of 1977

³⁹ The Constitution of the United Republic of Tanzania of 1977

⁴⁰ The Criminal Procedure Act (Cap 20 RE 2023)

Case laws

Case of Republic Vs Charles Rose (1921—1952) TLR 213⁴¹,

The court said that “Bail should never be intended to be punitive, but only to secure the attendance of the prisoner at the trial, and a magistrate is not competent to refuse bail, unless the law sanctions such refusal”.

In the Case of Tito Douglas Lymo Vs Republic 1978 L.R.T.N.55⁴²,

The court states that; “bail is a right and not a privilege to an accused person unless the court is convinced that by concrete evidence in most cases, if not all, emanating from the prosecution when objecting to an application for bail that to grant bail would result in a failure of justice or that it would result in the abuse of court process”.

In the Case of Athumani Ally Maumba [1988] TLR 114⁴³,

The appellant had violated some children and the police objected to bail on the ground that he could be assaulted by the parents of the victims. The District Court refuses bail. On appeal, the court said that;

Before the provisions of section 148(5) (f) CPA [S.148 (5) (d) CPA] are invoked to the detriment of an accused person, the prosecution must clearly show that the accused's safety is in danger and such information must be verified as to its authenticity.

In the Case of Mohamed Ali Bhai Vs Republic (1921—1952) 1 TLR 138⁴⁴,

The court said that;

In deciding whether or not to grant bail, the court should look at the allegations on reasonable grounds that the accused, if released on bail, is likely to tamper or attempt

to temper with or improperly influence Republic witnesses, thus interfering with the due course of justice. The allegations must be based on reasonable grounds.

In the Case of Bhagwanji Kakubhai Vs Republic (1921—1952) 1 TLR 143⁴⁵,

The mere assertion that an accused person has knowledge and documents in his possession which, if used, may upset the smooth course of police investigation is too hypothetical, vague and unsubstantial a reason for refusing bail.

In the Case of Abdallah Nassoro Vs Republic (1921—1952) 1 TLR 289 at p 293

The court said the following;

The true test is whether the granting of the application will be detrimental to the interest of justice and good order...But such detriment must be satisfactorily substantiated by solid reasons and not based on vague fears or apprehensions or suspicions and bail should not be lightly refused.

In the Case of Asoka Vs Republic (1971) HCD No.192⁴⁶,

The appellant was charged with stealing Tshs. 2.5 million, the property of the Government of Tanzania. He was refused bail. The judge on appeal found that:

“There can be no doubt that the offence with which the accused person is charged is a serious one. Equally, it is my view that it would be unsafe, indeed almost unrealistic, to grant bail pending the hearing of the case. Granting of the application would be detrimental to the interest of justice”.

In the Case of Edward D. Y. Kambuga and Another Vs Republic [1990] TLR 84⁴⁷,

The High Court granted bail to the first appellant in near impossible conditions and refused the

⁴¹ (1921—1952) TLR 213,

⁴² (1978) L.R.T.N.55,

⁴³ [1988] TLR 114

⁴⁴ (1921—1952) 1 TLR 138

⁴⁵ (1921—1952) 1 TLR 143,

⁴⁶ (1971) HCD No.192

⁴⁷ [1990] TLR 84,

second appellant bail on the ground that he was a foreigner. On appeal;

While foreigners should not be treated differently in our courts merely because they are foreigners, we think the High Court was entitled to take into account experience when deciding finally whether or not to grant bail.

PRINCIPLES OF BAIL:

Presumption of Innocence is a cornerstone of criminal law. Every person is presumed innocent until proven guilty in a court of law. Bail is based on this presumption, meaning that individuals should not be held in custody before trial simply because they are accused of a crime. According to Article 13 (6) (b)⁴⁸ of the Constitution of the United Republic of Tanzania of 1977. The presumption of innocence means that a person is entitled to bail unless there are strong reasons to believe that their release would interfere with the administration of justice or cause a risk to society.

Right to personal liberty, in Tanzania, personal liberty is a constitutional right. The Constitution of Tanzania guarantees individuals the right to liberty, and this right extends to those who are facing criminal charges. According to Article 15 (1)⁴⁹ of the Constitution of the United Republic of Tanzania of 1977. An individual accused of a crime should not be deprived of their liberty unless there are compelling reasons to deny bail. The Criminal Procedure Act and other legal frameworks affirm that bail should be the rule, and detention should be the exception.

Bail consideration is guided by two main principles, namely, presumption of innocence and right to liberty as guaranteed by the Constitution, statutes and case law.

Types of Bail

There are two types of bail such as police bail and court bail.

Police Bail.

A person arrested without a warrant by a police officer must be charged before the court of law within twenty-four hours of such arrest, according to section 33 (1)⁵⁰ of the Criminal Procedure Act and section 31⁵¹ of the Police Force and Auxiliary Act, Cap 322 R.E 2023. Where, after twenty-four hours, the person was arrested formal charge has been laid against him, he must be set free unless the police officer in question reasonably believes that the offence suspected to have been committed is a serious one, according to section 65 (1)⁵² of the Criminal Procedure Act.

When a person is admitted to bail by a police officer, no money is paid to such police officer instead the person may be required to execute a bond with or without sureties to appear before such police officer at a date to be determined by the police officer according to section 31 (4)⁵³ of the Police Force and Auxiliary Service Act. When a suspect is arrested or held under restraint by the police or any other investigative agency, he may be granted bail pending investigation and institution of a charge before a court of law under section 65 (1)⁵⁴ of the Criminal Procedure Act.

Matters Relevant to the Grant of Police Bail

Section 66⁵⁵ of the CPA lays down three categories of matters which police officers must take into account when considering the grant of police bail, which are;

Firstly, those related to the probability of the person appearing in court, such as his community ties, residence, employment, the circumstances in

⁴⁸The Constitution of the United Republic of Tanzania of 1977

⁴⁹ The Constitution of the United Republic of Tanzania of 1977

⁵⁰The Criminal Procedure Act (Cap 20 RE 2023)

⁵¹ The Police Force and Auxiliary Act (Cap 322 R.E 2023)

⁵² Ibid

⁵³ The Police Force and Auxiliary Service Act (Cap 322 R.E 2023)

⁵⁴ The Criminal Procedure Act (Cap 20 R.E 2023)

⁵⁵ The Criminal Procedure Act (Cap 20 RE 2023)

which the offence was committed, the seriousness of the offence and the strength of the evidence.

Secondly, those related to the interest of the person himself, such as the period that the person may be obliged to spend in custody if bail is refused, the conditions under which he would be held in custody, the need of the person to obtain legal advice or the need of the person's physical protection

Thirdly, those related to the protection of the community, such as the likelihood of the person interfering with the evidence through intimidating witnesses or hindering police inquiries in any other way.

Refusal to Grant Police Bail

Police bail must not be unreasonably refused. It can only be refused for good cause and where a police officer refuses to grant bail, not only must he record in writing the reasons but must, cause the person who refused police bail to be brought before a magistrate as soon as is practicable to be dealt with in accordance with per law according to section 68(1) ⁵⁶and (2) CPA.

Breach of Condition and Revocation of Police Bail

Police bail may be revoked and the person arrested if the police believe he is absconding or planning to abscond or to breach an undertaking he made as a condition for bail, according to section 69 CPA. Unreasonable failure to comply with an undertaking given by a person as a condition of his release is an offence which, on conviction, attracts a penalty not exceeding the maximum penalty that could be imposed on him upon conviction for the offence in respect of which he was arrested and then released on bail according to section 69 CPA ⁵⁷.

Court Bail

Court bail may be granted during trial or pending appeal. Once a charge has been instituted, the court has the power to grant bail - except where

the law provides otherwise. The court must inform an accused person of his right to bail immediately after his plea has been taken. These Guidelines are specifically intended to address court bail.

In practice, there are two scenarios under which bail may be applied or granted in a subordinate court, namely: on first appearance in court when the suspect is charged with an offence. In such an instance, the accused person on his advocate, may stand up and apply for bail and such application will be considered by the court accordingly. The second scenario is when the accused is already in remand prison. In such a case, if the court deems it expedient, it will issue a removal order in advance of the hearing of the application for bail or after bail has been granted, whichever procedure is more convenient for the court.

Power of the High Court to Grant Bail

The High Court may direct that an accused person be admitted to bail or that the bail required by a magistrate's court, including a primary court or a police officer, be reduced. Moreover, the High Court has the power to vary the terms of bail granted by a magistrates' court, including primary courts. The High Court will vary the terms where a magistrate's court either refuses to do so or does so or offers to do so on terms unacceptable to an accused person, the High Court may admit the accused person or direct the accused's admission to bail or, where he has been admitted to bail, may vary on any conditions on which he was so admitted or reduce the amount in which he or any surety is bound to discharge any of the sureties. All orders on bail matters made by magistrates' courts are appealable and are subject to revision by the High Court. Equally, the High Court may direct any magistrate to levy the amount due on the recognisance to appear and attend at the High Court.

Being the highest court of record, the High Court has unlimited jurisdiction concerning matters of bail. More specifically, it has the following powers;

⁵⁶ The Criminal Procedure Act (Cap 20 RE 2023)

⁵⁷ The Criminal Procedure Act (Cap 20 RE 2023)

Firstly, to vary the terms of bail by the lower court, which includes deciding appeals against refusal to grant bail by a subordinate court. Section 152⁵⁸ Criminal Procedure Act.

Secondly, to order sufficient bail when the first taken is insufficient. Section 157⁵⁹ of the Criminal Procedure Act.

Thirdly, to direct the levy of the amount due on certain recognisances. According to Section 165⁶⁰ Criminal Procedure Act.

Under the Economic and Organization Crime Control Act, where the value of the property involved exceeds three hundred million shillings, jurisdiction to consider bail application is vested in the High Court under Section 29 (4) (d)⁶¹ of the Economic and Organized Crime Control Act [Cap 200 R.E 2023].

Statutory Restriction to Bail

The principle of restriction on the power of the court to grant bail is to be found in Section 151 of the Criminal Procedural Act and Section 36 (4)⁶² of the Economic and Organization Crime Control Act. The restriction to grant of bail falls under two categories. Firstly, offences which are by law declared to be non-bailable and secondly, offences in respect of which bail may be restricted under certain circumstances, although they are ordinarily bailable.

Non-Bailable Offences

In terms of Section 151 (5)⁶³ of the Criminal Procedure Act, a person charged with the following offences may not be granted bail by a court. The offences falling in that fact category are;

Murder, treason, armed robbery, defilement, Illicitly trafficking in drugs against the Drugs and Prevention of Illicitly Traffic in Drug Act, An

offence involving heroin, cocaine, prepared opium, opium poppy, poppy straw, coca plant, coco leaves, cannabis sativa or cannabis resin (Indian hemp), Methaqualone, or any other narcotic drug or psychotropic substance, where the value of such drug has been certified by the Commissioner for National Co-ordination of Drugs Control Commission, as exceeding ten million shillings.

Restrictions on Bailable Offences

Section 151 (4) and (5) (b)-(e)⁶⁴ of The Criminal Procedural Act provides that bail cannot be granted by a police officer or court under the following circumstances, that are;

Firstly, if the Public Prosecutions certifies in writing that it is likely that the safety or interest of the Public would thereby be prejudiced, according to Section 151 (4)⁶⁵ of the Criminal Procedure Act.

Secondly, if it appears that the accused person has previously been sentenced to imprisonment for a term exceeding three years. Section 151 (5) (b)⁶⁶ of the Criminal Procedure Act.

Thirdly, if it appears that the accused person has previously been granted bail by a court and failed to comply with the condition of the bail or absconded, this is according to Section 151 (5) (c)⁶⁷ of the Criminal Procedure Act. It may be noted in the analysis of this provision that failure to comply with the conditions of bail will, as a matter of logic, include commission of an offence while on bail.

Fourthly, if it appears to the court that the person must be kept in custody for his own protection or safety, Section 151 (5) (d)⁶⁸ the Criminal Procedure Act.

Sixthly, if the offence with which the person is charged involves actual money or property whose

⁵⁸The Criminal Procedure Act (Cap 20 RE 2023)

⁵⁹ The Criminal Procedure Act (Cap 20 RE 2023)

⁶⁰ The Criminal Procedure Act (Cap 20 RE 2023)

⁶¹ The Economic and Organized Crime Act, RE 2023

⁶² Ibid

⁶³ The Criminal Procedure Act (Cap 20 RE 2023)

⁶⁴ The Criminal Procedure Act (Cap 20 RE 2023)

⁶⁵ Ibid

⁶⁶ Ibid

⁶⁷ Ibid

⁶⁸ Ibid

value exceeds ten million shillings unless that person deposits cash or other property equivalent to half the amount or value of actual money or property involved and the rest is secured by execution of a bond, Section 151 (5) (e)⁶⁹ Criminal Procedure Act. The condition of depositing cash does not apply to police bail since, in terms of section 31 (4)⁷⁰ of the Police Force and Auxiliary Service Act, no fee is chargeable on police bail.

Seventhly, if the act or acts constituting to offence with which a person is charged consist of a serious assault causing grievous harm to or a threat of violence to another person or of having or possessing a firearm or an explosive. This provision was added to the Criminal Procedure Act by an amendment introduced by Act No. 12 of 1987. The offences which easily come to mind as non-bailable under these provisions are robbery, causing grievous bodily harm and attempted murder. Robbery, for instance, is defined under our Penal Code (Cap 16 RE 2023)⁷¹ as stealing with the actual use of violence or threat of violence to any person or property at or immediately before or after such stealing, where the actual violence or threat of it is to obtain or retain. Now, since the statutory restriction speaks of an act or acts constituting the offence that consists of a serious assault causing grievous harm or threat of violence to another person, it follows that the offence of robbery will generally be non-bailable where the violence causes grievous bodily harm.

Conditions of Court Bail

Two types of conditions may be imposed by the court on the grant of bail that is; mandatory conditions, which must be imposed and discretionary conditions, which may be imposed at the option of the court.

Mandatory Conditions

Section 151 (6) ⁷²of the Criminal Procedure Act RE 2023 lays down the following mandatory conditions which are;

Firstly, surrender by the accused person to the police of his passport or any other travel document.

Secondly, restriction of the movement of the accused to the area of the town, village or other area of his residence.

Discretionary Conditions

Section 151 (7)⁷³ of the Criminal Procedure Act provides that the court may also impose any one or more of the following conditions which appear to the court to be likely to result in the appearance of the accused for the trial or resumption of the trial at the time and place required or as may be necessary in the interests of justice for the prevention of crime namely;

Firstly, requiring the accused to abstain from visiting a particular locality or premises or associating with certain specified persons.

Secondly, requiring the accused to report at specified intervals to a police station or other authority within the area of his residence.

Thirdly, any other condition which the court may deem proper and just to impose in addition to the preceding conditions.

CONCLUSION

This study has critically examined the right to bail as a fundamental human right within the Tanzanian legal system. It has been demonstrated that while the Constitution of the United Republic of Tanzania recognises the principle of presumption of innocence, the full realisation of the right to bail remains constrained by statutory limitations, procedural inconsistencies, and practical barriers.

⁶⁹ Ibid

⁷⁰ The Police Force and Auxiliary Service Act, (Cap 322 RE 2023)

⁷¹ The Penal Code (Cap 16 RE 2023)

⁷² The Criminal Procedure Act (Cap 20 RE 2023)

⁷³ The Criminal Procedure Act (Cap 20 RE 2023)

Through an analysis of the Criminal Procedure Act, the Economic and Organized Crime Control Act, and relevant case law, the research has shown that the legal framework governing bail is often marked by restrictive provisions, particularly for serious or economic offences, which in practice limit access to bail for many accused persons. The study further revealed that the exercise of judicial discretion in bail matters, although lawful, is inconsistently applied, sometimes leading to arbitrary or unjust outcomes.

Moreover, the research has highlighted the challenges faced by vulnerable groups such as the poor, unrepresented, or politically marginalised in securing bail. These challenges raise serious concerns about access to justice, equality before the law, and compliance with international human rights standards, particularly those enshrined in the International Covenant on Civil and Political Rights (ICCPR).

Therefore, while bail is constitutionally and legally recognised in Tanzania, its implementation falls short of ensuring equal protection and fairness for all. This study recommends targeted legal and procedural reforms to remove discriminatory barriers, promote consistency in judicial decision-making, and align bail practices with human rights principles. Strengthening the bail system is not only a matter of legal necessity but also a critical step toward safeguarding the rule of law and upholding justice in the criminal justice system of Tanzania.

Recommendation

This work agrees that bail is a constitutional right in the government of the United Republic of Tanzania. This is because the right to liberty and presumption of innocence person unless the court of law declares that person is guilty as provided under our current Constitution of the United Republic of Tanzania. The Constitution of the United Republic of Tanzania is a mother law,

which means that any law that goes against the Constitution must be declared void and null.

Therefore, all laws which are inconsistent with the Constitution on matters relating to the Bill of Rights require amendment. Thus, provisions like Section 151⁷⁴ of the Criminal Procedure Act [Cap 20 RE 2023] need to be amended because they go against the Constitution on matters relating to the Bill of Rights.

Furthermore, the incoming Constitution, apart from providing for the rights of liberty and presumption of innocence, should expressly declare that bail is a right and not a privilege and that only the court of justice can determine the grant of bail. Therefore, if the DPP wishes not to grant bail to an accused, the DPP should come forward with tangible reasons before a court of law.

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