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**TITLE: THE LEGAL CHALLENGES ON DETERMINATION OF BAIL IN MAINLAND
TANZANIA**

**A Research Proposal Submitted in Partial Fulfillment of Requirements for the award of
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BY

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CERTIFICATION

The undersigned certifies that he has read and hereby recommends for acceptance by the Ruaha Catholic University dissertation titled; **THE LEGAL CHALLENGES ON DETERMINATION OF BAIL IN MAINLAND TANZANIA** in fulfillment of the requirement for award of the degree of Bachelor of Laws (LLB).

Signature.....

Dr. Anne Malipula

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Date.....-

DECLARATION

I, **ADELAH POLYCARP BENEDICT** , I do hereby declare that this dissertation is my own work that has not been submitted in any university in pursuant to any degree program. All literature referred to and used in this work have been sufficiently cited and acknowledged.

Signature.....

Date.....

ACKNOWLEDGEMENT

I begin by thanking **ALMIGHTY GOD** for His grace, strength, and guidance throughout this research journey.

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DEDICATION

This work is lovingly dedicated to my dear parents,

Mr. and Mrs. Polycarp Benedict,

for your unconditional love, constant prayers, and endless support.

Your sacrifices and encouragement have made this journey possible.

May this achievement be a reflection of your unwavering belief in me.

ABSTRACT

This research investigates the legal challenges associated with the determination of bail in mainland Tanzania. The hypothesis is that the current bail determination in Tanzania section 148(5) of the criminal procedure Act R.E 2022 lacks standardized criteria on non bailable offenses such as murder, drug trafficking, treason in the Administration of Justice. The main objective of the research is to investigate the legal challenges faced in determining bail in Tanzania criminal Justice system so as to ensure good flow of administration of justice, also specific objective of the research firstly is to examine current legal framework on non bailable offenses so as to come up with proper legal framework on non bailable offenses and secondly to access the extent to which lack of standardized criteria for bail hearings contributes to inconsistent bail decisions. Methodology used were doctrinal which means it is library based research where by the researcher adopted various literatures and documents through the review of statutory instruments, case laws, scholarly writings and international legal instruments. The findings revealed that gaps in procedural transparency and judicial discretion that hinder the fair administration of justice. Based on these findings, the study recommends comprehensive legal reform, adoption of risk based assessment tools, standardized judicial guidelines and greater alignment with international human rights norms. Frequently repeated key words include Bail, Criminal Justice system, innocent

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Domestic Laws

1. The Constitution of the United Republic of Tanzania, 1977 (as amended)
2. The Criminal Procedure Act, Cap. 20 [R.E. 2022]
3. The Bail Act, Cap. 21 [R.E. 2002]
4. The Economic and Organized Crime Control Act [R.E. 2022]
5. The National Security Act [R.E. 2002]
6. The Law of Evidence Act, Cap. 6 [R.E. 2022]

International Instruments

1. Universal Declaration of Human Rights (UDHR), 1948
2. International Covenant on Civil and Political Rights (ICCPR), 1966
3. African Charter on Human and Peoples' Rights, 1981
4. Constitution of the Republic of South Africa, 1996

5. Criminal Procedure Act 51 of 1977 (South Africa)
6. Constitution of Kenya, 2010
7. Bail and Bond Policy Guidelines, 2015 (Kenya)

LIST OF CASES

Director of Public Prosecutions v. Daudi Pete [1993] TLR 22

Republic v. Mussa Mohamed and Another [1989] TLR 114

D.P.P v. Angeline Ojare, High Court of Tanzania at Arusha, Criminal Appeal No. 31 of 1996 (Unreported)

Republic v. Musuba Nyeisao and Another, High Court of Tanzania at Mwanza, Misc. Criminal Cause No. 6 of 1990 (Unreported)

Republic v. Ally Mohamed, High Court of Tanzania (Unreported)

LIST OF ABBREVIATIONS

UDHR	Universal Declaration of Human Rights
ICCPR	International Covenant on Civil and Political Rights
LHRC	Legal and Human Rights Centre
CHRAGG	Commission for Human Rights and Good Governance
DPP	Director of Public Prosecutions
CPA.	Criminal Procedure Act
EACC	Economic and Organized Crime Control Act
UN	United Nations
AU	African Union
HCoT	High Court of Tanzania

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CHAPTER ONE

GENERAL INTRODUCTION

1.0 INTRODUCTION

The term Bail means the money a defendant pays that allows an arrested person to be released from jail before their trial.¹ It is based on the idea that someone accused of a crime is innocent until proven guilty. In Tanzania bail can be sought and be granted by institution.²

By the court

When the case is instituted before the court of law, police power to grant bail is curtailed under this situation bail can only be sought in court

The right of bail is fundamental in the administration of criminal justice. According to article 13(6) (b) of the constitution of the united Republic of Tanzania. It guarantees the presumption of innocence.³ The accused person promises that he will pay to the government a certain sum of money fixed by the police or court should he fail to attend his trial on a specified date. When an accused person is granted bail he is not completely free but is only released from the custody of law officers. In order to ensure the attendance of the accused before the court or at the police station bail is usually attached by some conditions. The conditions may be in the form of a bond, recognizance and sureties.

Origin of Bail

¹ <https://dictionary.cambridge.org>

² The Criminal Procedure Act R.E 2020

³ The Constitution of the united Republic of Tanzania, 1977

The concept of bail has ancient origins and is deeply rooted in the evolution of criminal justice systems. The term “bail” derives from the Old French word *baillier*, meaning “to deliver” or “to hand over,” and in legal terms, it refers to the release of an accused person from custody on the condition that they will return to court when required.⁴

The origin of bail can be traced back to Anglo-Saxon England before the Norman Conquest of 1066. During this period, communities practiced a system called “suretyship,” where a person accused of an offence could be released upon the promise or guarantee of another person often a family or community member who pledged to ensure the accused’s appearance in court.⁵ This early form of bail focused on communal responsibility, rather than financial conditions.

With the development of the English legal system, especially under the influence of Magna Carta (1215), the right to bail gained legal recognition. Clause 39 of the Magna Carta emphasized that no free man shall be imprisoned without due process, laying a foundation for protections against arbitrary detention.⁶ By the 13th and 14th centuries, the English Parliament began to regulate bail more formally. The Statute of Westminster (1275) was one of the earliest legal instruments that categorized bailable and non-bailable offences.⁷

In the 17th century, the right to bail was reinforced by the Habeas Corpus Act of 1679, which allowed prisoners to challenge unlawful detention and emphasized the right to a fair and speedy trial. The English Bill of Rights (1689) further declared

⁴ Bryan A Garner (ed) *Black’s Law Dictionary* (11th edn, Thomson Reuters 2019) 179

⁵ P R Glazebrook, *The Historical Origins of Bail* (1960) 24 *Modern Law Review* 652.

⁶ Magna Carta 1215

⁷ Statute of Westminster 1275

that “excessive bail ought not to be required,” introducing the principle of reasonable bail conditions.⁸

This English legal tradition was later adopted and modified in many Commonwealth countries, including Tanzania, which inherited its criminal procedure system from British colonial administration. The Criminal Procedure Act (Cap 20 R.E. 2022) in Tanzania today reflects many of these historical principles, while also incorporating elements from customary law and post-independence legal developments.⁹

In summary, the origin of bail reflects a long-standing effort to protect individual liberty while ensuring the proper administration of justice a balance that continues to be refined in modern legal systems.

1.2 BACKGROUND OF THE PROBLEM

Before colonial rule, traditional African legal systems in Tanzania did not have a formal concept of bail as it is understood in modern legal systems. Instead, community elders or chiefs would decide on the release of an accused person based on their own discretion and the circumstances of the case (Mwanga, 2015).¹⁰ However, with the arrival of European colonizers, new legal frameworks were introduced that significantly influenced the way bail was handled in Tanzania.

During colonial rule, European legal systems were imposed on Tanzania. The British common law system, which included provisions for bail, became the foundation for Tanzania’s legal framework (Mwanga, 2015). The British Common

⁸ Bill of Rights 1689

⁹ Criminal Procedure Act, Cap 20 (R.E.2022)

¹⁰ Mwanga, J.,(2015).Bail

Law provided that an accused person was entitled to bail unless there were substantial grounds for believing that they would fail to attend court or would pose a flight risk or a danger to the public (Mwanga & Mgode, 2018).¹¹ This approach continued after Tanzania gained its independence in 1961.

After independence, Tanzania adopted its own Constitution in 1963. Article 49(3) of this Constitution provided that every person charged with a criminal offense was entitled to be released on bail unless there were substantial grounds for believing that they would not attend court or would interfere with witnesses or otherwise obstruct the course of justice (Constitution of Tanzania Mainland 1963). This provision remained largely unchanged until the enactment of the Criminal Procedure Code (CPC) in 1974.

¹¹ Mwanga, J., & Mgode, J., Bail: A Comparative Analysis between Kenya and Tanzania under international Human Rights Law Perspective. *Journal of Human Rights Practice and Development* Vol. 8 No.3, (2018), pg. 4-14

Since then, there have been further amendments to Tanzania's bail laws. For instance, Section 57(2) of the CPC was amended in 2022 to include additional grounds for denying bail such as if there was a risk that the accused might abscond or commit another offense while on bail (Law Society of Tanzania). Additionally, Section 57(3) was added which allowed courts to impose conditions on bail such as requiring an accused person to report regularly to police stations or surrender their passports (Law Society of Tanzania).

In conclusion, the legal history of bail in Tanzania has evolved significantly over time from traditional African legal systems through colonial rule and into post-independence eras. While early legal frameworks drew heavily from British common law principles regarding bail, subsequent amendments have expanded upon these provisions and given courts greater discretion when determining whether to grant bail and what conditions should be attached thereto.

1.3 STATEMENT OF THE PROBLEM

According to section 148(5) of the Criminal Procedure Act RE 2022¹² creates a challenge to the principle of Bail for certain serious offences including murder. The general principle is that a person is presumed innocent until proven guilty. Denial of Bail can be seen as punishment before trial because treats the accused as if they are already guilty by taking away their freedom before a trial and also being locked up can be a stressful psychologically damaging experience but also denial of Bail before trial can make it harder for the accused to prepare a defense they may have limited access to lawyers, witnesses and evidence.

¹² the Criminal Procedure Act R.E 2022

1.4 HYPOTHESIS

It seems that the current bail determination process in Tanzania lacks standardized criteria on non bailable offences in the Administration of justice.

1.5 OBJECTIVES OF THE RESEARCH

1.5.1 GENERAL OBJECTIVE

To investigate the legal challenges faced in determining bail in Tanzania criminal justice system so as to ensure good flow of administration of justice.

1.5.2 SPECIFIC OBJECTIVES

To assess the extent to which lack of standardized criteria for bail hearings contributes to inconsistent bail decisions.

To examine current legal framework on the non bailable offences so as to come up with proper legal framework on non bailable offences.

1.6 LITERATURE REVIEW

This literature review aims to provide an overview of the current state of research on this topic, focusing on the challenges encountered in determining bail for various offenses under Tanzanian law.

Mwanga Thabit Mwanga¹³. In his book titled “*Criminal procedure and Evidence Law in Tanzania*,” argues that the Bail Act Cap 21 of the Revised Edition 2002 provides a clear framework for bail determination. However, he acknowledges

¹³ Mwanga, T. M., *Criminal Procedure and Evidence Law in Tanzania*. Dar es Salaam: Extra marks Publishers Ltd. (2013).

that challenges arise when applying this law to specific cases, especially those involving serious offenses such as terrorism or treason. Also discusses the constitutionality of bail provisions under the CPC and argues that they are inconsistent with the right to liberty enshrined in Article 13(2) of the Constitution of Tanzania, 1977

However he explains on the challenges encountered in determining bail for various offenses under Tanzanian law. The author tries to explain the weakness of the law relating to bail about legal challenges on determination of bail in Tanzania argues that they are inconsistent with the right to liberty written in Article 13(2) of the constitution of Tanzania, 1977¹⁴ as main problem. But the author fails to provide measures or steps to be taken in order to prevent the problem on determination of bail to some offences in Tanzania moreover the researcher will advise to amend the law so as to ensure good flow of administration of justice.

Anna Mgaya.¹⁵ In her book titled “*Access to Justice and Fair Trials: The Case of Bail Application Processes in Tanzania*” that ensuring fairness throughout to the entire criminal justice process is crucial for maintaining public trust and confidence in the legal system. This study focuses on the human rights by of bail determination and highlights cases where magistrates have denied bail arbitrarily or without sufficient justification. Dr. Mgaya emphasizes that such decisions violate fundamental human rights, including the right to a fair trial and freedom from arbitrary detention. The researcher will emphasize the importance of following legal procedure and to ensure a fair and transparent decision in bail applications for specific offences.

¹⁴ The Constitution United Republic of Tanzania, 1977

¹⁵ Mgaya, A., Access to justice and fair Trials: The case of Bail Application processes in Tanzania. *International Journal on Human Rights & Constitutional Practice* 9(3), (2018). pg. 57-76.

Jabir Iddi's¹⁶, In his book titled “*Balancing Liberty and Public Safety in Bail Determination under Tanzanian Law*” Discusses the importance of balancing the rights of the accused to liberty with public safety concerns. He emphasizes that while some offences may warrant denial of bail due to their serious nature and potential threat to public order, there is a need for caution against arbitrary detention. One key point that Professor Iddi highlights is the need to avoid arbitrary detention, even in cases where offenses are deemed serious. He argues that while public safety concerns are priority, it is essential to uphold the principle of fairness and avoid unjustly depriving individuals of their liberty without due process. The researcher will examine current legal framework on the non bailable offences so as to come up with proper legal framework on non bailable offence.

John J. Wefelmeyer's. In his work titled “*Legal Complexities in Bail Determination for Criminal Offenses in Tanzania*” analysis on the legal challenges regarding the determination of bail for certain offenses in Tanzania provides valuable insights into the complexities and issues surrounding this aspect of the legal system. In his study, Professor Wefelmeyer investigate into the various factors that influence the decision-making process when it comes to granting bail for different types of offenses in Tanzania. One key aspect that Professor Wefelmeyer addresses is the disparity in bail determinations based on the nature of the offense. He highlights how certain offenses are more likely to result in denied bail or higher bail amounts compared to others, leading to potential inequalities in the treatment of individuals within the legal system. The researcher will investigate the legal challenges faced in

¹⁶ Iddi, J., *Bail and Pre-trial Detention: A Comparative Analysis of selected African Jurisdictions*. African Journal of Legal Studies 4(3) , (2015), pg. 377-404

determining bail in Tanzania criminal justice system so as to ensure good flow of administration of justice.

Godfrey Mwambe's¹⁷, in his work titled "*Bail and Pre-trial Detention: A Human rights perspective*", adds another layer to the discussion, emphasizing the importance of treating pre-trial detention as an exception rather than the rule. By highlighting the potential violations of human rights that can occur with prolonged pre-trial detention, Mwambe calls for strict adherence to the principles set out in the Bail Act Cap 21. Mwambe's argument aligns with international human rights standards that emphasize the right to liberty and fair trial, as enshrined in various international treaties and conventions. By calling for strict adherence to these principles, he advocates for a more rights-based approach to bail and pre-trial detention, ensuring that individuals are not unjustly deprived of their liberty without due process. The researcher will assess the extent to which lack of standardized criteria for bail hearings contributes to inconsistent bail decisions.

1.7 SIGNIFICANCE OF RESEARCH

1. Ensures Protection of Fundamental Rights

This research defends the constitutional right to liberty by addressing how unfair bail decisions can lead to arbitrary detention. It supports the right to be presumed innocent until proven guilty, which is a cornerstone of justice in Tanzania.

2. Exposes Gaps and Weaknesses in the Bail Laws

¹⁷ Mwambe, G., *Bail and Pre-trial Detention: A Human Rights Perspective [Tanzania Law Journal]*. Dar es Salaam University Press Vol. 48 No 3 (2016), pg. 59-78

The study identifies contradictions and loopholes within the Bail Act, Criminal Procedure Act, and the Constitution. By exposing these weaknesses, the research helps lawmakers and legal experts see where reforms are urgently needed.

3. Promotes Fair and Equal Treatment Before the Law

This research highlights how some people are unfairly denied bail depending on the type of offense they are accused of. It pushes for equal access to justice and calls for consistency in bail decisions across the legal system.

1.8 JUSTIFICATION OF RESEARCH

1. To Address Gaps in the Legal Framework

The current legal framework governing bail in Tanzania particularly the provisions under the Criminal Procedure Act, Cap 20 R.E. 2022 lacks clear and standardized criteria for determining bail, especially in cases of non-bailable offences. This research is justified as it seeks to identify these gaps and recommend reforms to promote legal certainty and protect individual rights.

2. To Promote Justice and Human Rights

The principle of presumption of innocence under Article 13(6)(b) of the Constitution of the United Republic of Tanzania, 1977, is often undermined when suspects are denied bail without individual case assessment. The research is necessary to advocate for a more balanced approach between safeguarding public interests and protecting constitutional rights.

3. To Reduce Arbitrary Use of Judicial Discretion

Judicial officers in Tanzania exercise wide discretion in granting or denying bail, yet there are no uniform standards guiding this discretion. This study is justified as it aims to propose structured and transparent guidelines to prevent arbitrary or biased bail decisions and ensure consistency across courts.

4. To Provide a Basis for Legal Reform

There is growing public concern over the denial of bail for offences that may not necessarily pose a threat to public safety. The research provides practical and legal evidence for policymakers, the judiciary, and law reform commissions to consider legislative changes that align with human rights standards and international obligations.

5. To Strengthen Rule of Law and Judicial Accountability

The absence of a formal requirement for courts to provide written reasons for bail decisions creates a transparency gap. This research is necessary to promote the adoption of procedural safeguards and accountability mechanisms to uphold the rule of law and reinforce public confidence in the judiciary.

6. To Encourage Comparative Learning

By examining bail determination processes in other legal systems (such as Kenya and South Africa), this research will help Tanzania learn from best practices. The justification lies in promoting regional harmonization of legal standards and enhancing the effectiveness of the Tanzanian criminal justice system through informed borrowing.

1.9 RESEARCH METHODOLOGY

The researcher has base on doctrinal which means it is library based research where by the researcher has adopt various literatures and documents to the title of the research on the legal challenges on determination of bail in Tanzania

1.9.1 Library research

The researcher has visit Ruaha catholic university library to obtain different related materials patterning to the legal challenges on determination of bail in Tanzania and also the researcher has analyze and review different books, research journal and scholar paper.

1.9.2 Data collection Methods

Both physical and online materials which are relevant to the subject matter will be applied, by the Researcher Also internet will be often visited so as to get online **materials towards** the research title.

1.9.3 Documentary Review/Library Resources

As being one among the important of research, that is to make reference as to what the previous researchers finds, and in order to make the study **successful**, the researcher will use some information which has already been collected and written by other researches. This may sometimes referred as documentary review as the researcher will gather data from textbooks, research papers, law reports and journal which are related to the subject in hand.

1.10 SCOPE AND LIMITATIONS

1.10.1 Scope of the study

The general objective of this research is to make a **analysis** on the legal challenges on determination of bail in Tanzania as provided under section 148(5) Of the Criminal procedure Act RE 2022.

1.10.2 Limitation of the Study

The researcher faced several limitations; one of the main limitations is adequate of research materials such as books, case laws because under the topic of legal challenges on determination of bail, many authors have not cover the topic.

CHAPTER TWO

**CONCEPTUAL FRAMEWORK ON THE LEGAL CHALLENGES ON
DETERMINATION OF BAIL IN TANZANIA**

2.0 Introduction

In this chapter the researcher provides the definitions of concepts that are used in the research. The importance of bail in Tanzania, Basic principles in considering legal challenges in the determination of bail in Tanzania. The purpose of this chapter is to show the general view on the concepts on the legal challenges on determination of bail.

Bail

means the money a defendant pays that allows an arrested person to be released from jail before their trial.¹⁸

Bail is a fundamental aspect of criminal justice, balancing the rights of accused persons with the interests of justice and public safety. In Tanzania, the determination of bail is governed by various legal provisions, including the Criminal Procedure Act (CPA), Cap. 20, the Constitution of the United Republic of Tanzania, 1977, and other specific statutes depending on the nature of the offense. Despite these legal frameworks, numerous challenges arise in the practical determination of bail, affecting both accused persons and the judicial system.

¹⁸ <https://dictionary.cambridge.org>

2.1 Human Rights

Human rights are universal, inherent, and inalienable entitlements that every human being possesses by virtue of being human. These rights are fundamental to the legal system and critical in understanding the application and limitations of bail within a democratic society such as Tanzania. Bail, as a legal remedy, directly engages the right to liberty, freedom from arbitrary detention, and the right to a fair trial.

In Tanzania, Article 15 of the Constitution of the United Republic of Tanzania, 1977 guarantees every individual the right to personal freedom and liberty. The Constitution explicitly states that “no person shall be subjected to arbitrary arrest, detention or exile.” This implies that any restriction of personal liberty including pre-trial detention must be in accordance with the law, and subject to judicial oversight. Thus, the bail process must be structured in a way that balances the state’s duty to prosecute crimes and the individual’s right to liberty.¹⁹

Internationally, the International Covenant on Civil and Political Rights (ICCPR) to which Tanzania is a signatory provides under Article 9(3) that “It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial.” This article emphasizes the need to avoid unnecessary detention, thereby promoting the use of bail as a protective measure of human rights.²⁰

¹⁹ Article 15 of the Constitution of the United Republic of Tanzania, 1977

²⁰ United Nations, International Covenant on Civil and Political Rights, Article 9(3).

However, in practice, many Tanzanians remain in prolonged pre-trial detention, particularly for non-bailable offences or due to inability to meet bail conditions. This disproportionately affects indigent accused persons and undermines the principle of equality before the law. As reported by the Legal and Human Rights Centre (LHRC), congestion in Tanzanian prisons is largely due to pre-trial detainees many of whom could have been granted bail but were not, due to harsh legal or financial conditions imposed.²¹

2.2 Rule of Law

The rule of law is a foundational principle in modern legal systems, ensuring that laws apply equally to all individuals, that justice is administered without arbitrariness, and that governmental powers are exercised within the confines of legal authority. In the Tanzanian context, the rule of law is enshrined in the Constitution and guides the administration of criminal justice, including bail proceedings.

Bail determination under the rule of law must follow legal procedures without discrimination, corruption, or misuse of authority. The judiciary, in exercising its mandate to grant or deny bail, is required to interpret and apply the law impartially. However, concerns have been raised regarding political and executive interference in bail matters especially in high-profile or sensitive cases posing a challenge to the full realization of the rule of law in Tanzania.

Furthermore, Section 148 of the Criminal Procedure Act, Cap. 20 R.E. 2022 outlines the general provision for bail. Yet Section 148(5) categorically lists certain

²¹ Legal and Human Rights Centre (LHRC), Tanzania Human Rights Report 2020, LHRC, Dar es Salaam.

offences as non-bailable, removing judicial discretion in granting bail for those offences. Legal scholars and civil rights advocates argue that this provision offends the rule of law by taking away the court's independent evaluative powers and applying a blanket restriction irrespective of individual case circumstances.²²

As observed in *Director of Public Prosecutions v. Daudi Pete* [1993] TLR 22,²³ the Court of Appeal emphasized the importance of judicial independence and held that mandatory denial of bail by statute may be unconstitutional if it strips courts of their authority to consider liberty claims on a case-by-case basis.²⁴

2.3 Separation of Powers

The doctrine of separation of powers divides state authority among the three organs of government: the legislature, the executive, and the judiciary. Each branch is given distinct and independent powers to prevent the abuse of authority. In the context of bail, the judiciary must be allowed to exercise its discretion freely without interference from the legislature or executive.

In Tanzania, the separation of powers is partially compromised by laws that limit judicial discretion in bail matters. For instance, as earlier mentioned, the Criminal Procedure Act, Cap. 20, through Section 148(5), prescribes certain offences as non-bailable. This legislative imposition curtails the court's discretion and undermines the judiciary's role in balancing individual liberty with the interest of justice.

²² Peter, Chris Maina, *Human Rights in Tanzania: Selected Cases and Materials*, Rüdiger Köppe Verlag, 1997.

²³ *Director of Public Prosecutions v. Daudi Pete* [1993] TLR 22

²⁴ *DPP v. Daudi Pete* [1993] TLR 22.

Moreover, the executive arm through law enforcement agencies such as the police has been accused of influencing bail outcomes by manipulating charges to fall under non-bailable categories, especially in politically sensitive cases.²⁵ This practice has been widely criticized by civil society organizations and legal practitioners, who argue that it violates the independence of the judiciary and distorts the balance envisioned by the doctrine of separation of powers.

True adherence to the principle of separation of powers requires that Parliament passes laws, the executive implements them, and the judiciary interprets them. Any encroachment on judicial discretion in bail matters compromises justice and allows room for potential abuses.

2.4 Presumption of Innocence

The principle of presumption of innocence is a key element of the right to a fair trial. It dictates that an accused person is considered innocent until proven guilty by a competent court of law. This principle is enshrined under Article 13(6)(b) of the Constitution of the United Republic of Tanzania and is also recognized under Article 14(2) of the ICCPR.²⁶

In practical terms, the presumption of innocence implies that an accused should not be subjected to punishment including pre-trial detention unless there is a compelling justification. Bail thus serves as a mechanism to uphold this principle by ensuring that individuals are not unnecessarily held in custody pending trial.

²⁵ Legal and Human Rights Centre (LHRC), Tanzania Human Rights Report 2022.

²⁶ Article 14(2) of the ICCPR.

However, when courts deny bail solely because an offence is listed as non-bailable, without considering the circumstances of the accused, they risk violating the presumption of innocence. This results in the punishment of individuals before they are proven guilty.

In the Tanzanian case of *Republic v. Mussa Mohamed and Another* [1989] TLR 114²⁷, the court reiterated that bail should not be denied simply because the accused is charged with a serious offence. Rather, the court must evaluate the risk of flight, tampering with evidence, or threats to public safety before making such a determination.

2.5 Justice

Justice, in its broadest sense, refers to the fair and impartial treatment of all individuals within the legal system. In the realm of criminal law, justice must be served to both the victim and the accused. For the accused, this includes access to a fair trial, legal representation, and the possibility of bail under reasonable conditions.

In Tanzania, justice is a constitutional ideal enshrined in Article 13(1) which guarantees equality before the law and equal protection under the law. The concept of justice must be interpreted to mean that all accused persons should have a fair opportunity to seek bail, and that bail conditions should be reasonable and not punitive.

²⁷ *Republic v. Mussa Mohamed and Another* [1989] TLR 114

Nevertheless, justice is often undermined when bail conditions are unaffordable or when magistrates impose excessive surety requirements. This effectively criminalizes poverty and causes unjust pre-trial detention for individuals who pose no flight risk or threat to society.

Furthermore, CHRAGG (Commission for Human Rights and Good Governance) in its 2021 report highlighted that many accused persons in rural areas remain unaware of their rights, including the right to apply for bail. This lack of legal awareness, combined with structural inefficiencies in the justice system, hinders access to justice and perpetuates inequality.²⁸

2.6 The Importance of Bail in Tanzania

Bail is a fundamental element of the criminal justice system and serves as a critical mechanism for balancing the rights of accused persons with the interests of justice and public safety. In Tanzania, bail is not only a procedural right but also a reflection of broader constitutional, legal, and human rights principles. Its importance is anchored in the right to liberty, presumption of innocence, access to justice, and the need to decongest prisons.

1. Protection of the Right to Personal Liberty

One of the primary purposes of bail is to protect an individual's right to personal liberty. Article 15(1) of the Constitution of the United Republic of Tanzania, 1977 provides that "every person has the right to freedom and liberty." Bail ensures that

²⁸ CHRAGG, Report on the State of Human Rights in Tanzania, 2021.

a person is not deprived of their liberty unnecessarily, particularly before a court has determined their guilt or innocence.²⁹

Bail prevents the misuse of pre-trial detention as a tool of punishment. Detention before trial, especially when prolonged or unjustified, amounts to a violation of constitutional rights. Therefore, bail serves as a safeguard to ensure that the state's power to detain is exercised within legal bounds and only when absolutely necessary.³⁰

2. Upholding the Presumption of Innocence

The legal system in Tanzania, as in other democratic jurisdictions, is built on the principle that an accused person is presumed innocent until proven guilty. Article 13(6)(b) of the Constitution affirms this principle, stating that every person charged with a criminal offence shall be presumed innocent until proven guilty.³¹

Bail is an essential expression of this principle, as it allows the accused to remain free while awaiting trial. Denying bail without strong legal justification contradicts the presumption of innocence and may result in unnecessary punishment before conviction. This was emphasized by the Court of Appeal in *DPP v. Daudi Pete* [1993] TLR 22, where it held that bail is a constitutional right and should not be withheld arbitrarily.³²

3. Access to Justice

²⁹ Article 15(1) of the Constitution of the United Republic of Tanzania, 1977

³⁰ The Constitution of the United Republic of Tanzania, 1977, Article 15.

³¹ The Constitution of the United Republic of Tanzania, 1977, Article 13(6)(b).

³² *DPP v. Daudi Pete* [1993] TLR 22.

Bail facilitates access to justice by allowing the accused to actively participate in the preparation of their defense. When a person is held in custody, their ability to communicate with their lawyer, gather evidence, and contact witnesses is severely limited.

Moreover, being out on bail allows the accused to continue working and supporting their family, thereby maintaining their social and economic well-being. For poor or marginalized individuals, this can mean the difference between survival and further hardship.

Legal aid organizations in Tanzania, including the Legal and Human Rights Centre (LHRC) and Tanzania Women Lawyers Association (TAWLA), have reported that denying bail to indigent persons often leads to prolonged pre-trial detention and unequal access to legal remedies.³³

5. Preventing Abuse of Power

Granting bail serves as a check on arbitrary state power and helps prevent the misuse of the criminal justice system for political or personal purposes. Without the option of bail, law enforcement officials might exploit pre-trial detention to silence dissenters, harass political opponents, or intimidate vulnerable groups.

In Tanzania, civil society groups have raised concerns that certain accused persons especially in politically sensitive cases are denied bail under the guise of non-bailable offences listed in Section 148(5) of the Criminal Procedure Act, Cap. 20

³³ LHRC, Tanzania Human Rights Report 2020, Legal and Human Rights Centre, Dar es Salaam.

R.E 2022. Reforming bail laws to restore judicial discretion would play a key role in protecting individuals from such abuses.³⁴

2.7 Conclusion

The legal principles discussed human rights, rule of law, separation of powers, presumption of innocence, and justice form the backbone of any fair and democratic criminal justice system. In Tanzania, while these principles are embedded in both constitutional and international frameworks, their implementation in bail determination remains inconsistent. Legislative restrictions, executive interference, and systemic inefficiencies continue to challenge the realization of these ideals. Legal reforms and judicial empowerment are therefore essential to ensure that bail practices uphold the fundamental rights of all accused persons.

³⁴ Criminal Procedure Act, Cap. 20 R.E 2022, Section 148(5).

CHAPTER THREE

LEGAL FRAMEWORK ON RESEARCH ON THE LEGAL CHALLENGES ON DETERMINATION OF BAIL IN TANZANIA.

3.1 The Constitution of the United Republic of Tanzania, 1977

This is the supreme law of the land and provides the fundamental rights and freedoms, including the right to personal liberty and the presumption of innocence. These principles are crucial in bail considerations. Article 13 and 15 of the constitution³⁵ are particularly relevant. The constitution involves the Protection of Personal Liberty in which the constitution guarantees the right to personal liberty, which is a fundamental principle in bail considerations. This right implies that individuals should not be detained arbitrarily. Also Presumption of Innocence the constitution upholds the presumption of innocence, meaning that an accused person is considered innocent until proven guilty. This principle is important in bail decisions, as it suggests that detention should be the exception rather than the rule.

3.2 The Criminal Procedure Act (CPA)

This Act governs the procedures for criminal investigations, prosecutions, and trials, including the rules and conditions for granting bail. It outlines the powers of the courts and the Director of Public Prosecutions (DPP) in relation to bail³⁶.

³⁵ Constitution of the united republic of Tanzania 1977

³⁶ Criminal procedure Act R.E 2022

The Criminal Procedure Act (CPA) in Tanzania is a cornerstone of the legal framework governing criminal proceedings, and it plays a very important role in the determination of bail. It provides the Bail Procedures which outlines the specific procedures for granting or denying bail, both by police officers and by the courts³⁷. Also it sets out the conditions under which bail can be granted, as well as the circumstances in which it may be denied. Also the Act provides Powers of Police and Courts it defines the powers of police officers to grant police bail and the powers of magistrates and judges to grant court bail. It also regulates the interaction between these two levels of bail authority.

3.3 The Economic and Organized Crime Control Act

This is a crucial piece of legislation that significantly impacts bail determinations, particularly in cases involving serious financial and organized offenses. It aims to provide a legal framework for controlling and eradicating economic and organized crimes³⁸. Also it establishes modified investigation and trial procedures, introduces new penal prohibitions, and provides enhanced sanctions and remedies. This legislation is designed to address complex crimes that pose a significant threat to the economy and society.

3.4 National Security Act

The National Security Act in Tanzania is a piece of legislation that holds significant weight, particularly when considering matters of bail in cases that touch upon state security. The act involves the Protection of State Interests in which purpose is to

³⁷ <http://parliament.go.tz>

³⁸ The Economic and Organized Crime Control Act (CAP. 200 R.E 2022)

safeguard the interests of the United Republic of Tanzania. This includes addressing activities like espionage, sabotage, and other actions deemed prejudicial to national security³⁹. Also it has an impact on the Bail Decisions. When individuals are charged with offenses under the National Security Act, the courts are likely to exercise heightened caution regarding bail.

3.5 International Human Rights Law

Tanzania is a signatory to various international human rights treaties, including the International Covenant on Civil and Political Rights (ICCPR). These treaties establish fundamental rights, such as the right to liberty and the presumption of innocence, which have implications for bail procedures.

3.6 Universal Declaration of Human Rights (UDHR)

This involves the Universal Declaration of Human Rights (UDHR) which is a foundational document which sets out basic human rights, including the right to liberty and security of person, and the presumption of innocence⁴⁰. These principles are fundamental to bail considerations.

3.7 International Covenant on Civil and Political Rights (ICCPR)

Tanzania is a signatory which obligates the country to uphold rights such as: The right to liberty and security of person (Article 9) The presumption of innocence (Article 14). And the right to a fair trial⁴¹. Also African Charter on Human and

³⁹ National Security Act (CAP 47) 2002

⁴⁰ United Nations General Assembly, The Universal Declaration of Human Rights, New York: United Nations General Assembly, 1948.

⁴¹ International Covenant on Civil and Political Rights (adopted 16 December 1966 entered into force 23 March 1976)

Peoples' Rights As a member of the African Union, Tanzania is bound by the African Charter, which also emphasizes the protection of fundamental rights, including the right to liberty.

3.8 African charter on Human and people's Rights

It is a crucial legal framework to consider when examining the legal challenges of bail determination in Tanzania. This involves the protection of Fundamental rights in which the charter guarantees fundamental human rights, including the right to liberty, the right to equality before the law and the right to a fair trial also it emphasizes the inherent dignity of human person and the need to protect individuals from arbitrary detention ⁴². The African Charter Influences the Interpretation and application of Tanzanian laws, including the Criminal Procedure Act and the constitution in which it provides a framework for evaluating whether national laws and practices comply with international human rights standards.

The African Charter on Human and people's Rights provides a vital international legal framework that influences bail determinations in Tanzania, Promoting fairness, justice and the protection of Fundamental rights.

3.9 The Law of Evidence

The rules of evidence play a significant role in bail hearings. The prosecution must present sufficient evidence to justify the denial of bail, particularly in cases where the DPP has issued a certificate. The Law of Evidence defines the burden of proof, which is crucial in bail proceedings which determine who is responsible for

⁴² Organization of African Unity (OAU), African charter on Human and peoples' Rights ("Banjul Charter") 1982

providing evidence and the level of proof required⁴³. Also there is Admissibility of Evidence, in which the rules of evidence govern the admissibility of various types of evidence, including Testimony from witnesses, Documentary evidence and Electronic evidence. In which these rules ensure that only reliable and relevant evidence is considered in bail decisions.

3.10 The Judiciary and Judicial Discretion

The role of judges and magistrates in exercising their discretion is paramount. Case law develops through judicial interpretation of statutes, and these precedents shape the application of bail rules. How individual judges are interpreting the laws, and the consistency of those interpretations, is a key factor.

Example of Judicial discretion involves the case of *D.P.P V. Angeline Ojare* , High court of Tanzania at Arusha, Criminal Appeal No. 31 of 1996 (unreported) Nchalla, J. 557⁴⁴ Also other case involves *Republic V. Musuba Nyeisao and Another*, high court of Tanzania at Mwanza, Miscellaneous Criminal Cause No. 6 of 1990 (unreported) Mwalusanya, J. 572⁴⁵

⁴³ Evidence Act [C.AP 6] R.E 2022

⁴⁴ *D.P.P V. Angeline Ojare* , High court of Tanzania at Arusha, Criminal Appeal No. 31 of 1996 (unreported) Nchalla, J. 557

⁴⁵ *Musuba Nyeisao and Another*, high court of Tanzania at Mwanza, Miscellaneous Criminal Cause No. 6 of 1990 (unreported) Mwalusanya, J. 572⁴⁵

CHAPTER FOUR

PRESENTATION AND ANALYSIS OF FINDINGS

4.1 Introduction

This chapter presents and analyses findings gathered through documentary and library research to explore the legal challenges in the determination of bail in Tanzania Mainland. The analysis is grounded on the research objectives, hypothesis, and methodology discussed in Chapter One. The study focused primarily on examining how the lack of standardized criteria affects bail decisions, especially in non-bailable offences, and how the existing legal framework contributes to inconsistencies in the administration of justice. Evidence from statutes, case law, and academic commentary form the core of this analysis.

4.2 Does the legal framework on bail determination promote justice in Tanzania?

In Tanzania, the right to bail is generally recognized under Article 13(6)(b) of the Constitution of the United Republic of Tanzania, 1977, which affirms the presumption of innocence until proven guilty.⁴⁶ However, the Criminal Procedure Act, Cap 20 R.E 2022, introduces exceptions where certain offences are categorized as non-bailable, particularly under section 148(5).⁴⁷ These include offences such as murder, treason, terrorism, and drug trafficking. This statutory categorization limits judicial discretion and has raised concerns over the blanket denial of bail without assessing the individual circumstances of each case.

For instance, in the case of DPP v. Daudi Pete, the Court of Appeal held that bail is a constitutional right that should not be denied arbitrarily.⁴⁸ However, in practice, the judiciary often finds itself constrained by rigid statutory provisions that automatically disallow bail for specific offences, regardless of the facts or the suspect's personal circumstances. This poses a serious challenge in aligning the right to liberty with public interest and legal certainty.

4.3. Does the absence of standardized criteria in bail determination affect the fair administration of justice?

One major challenge in Tanzania's bail system is the lack of standardized criteria guiding judicial discretion. While discretion is necessary for individual justice, its unstructured use has led to inconsistent bail decisions for accused persons in similar

⁴⁶ The Constitution of the United Republic of Tanzania, 1977,

⁴⁷ Criminal Procedure Act, Cap 20 R.E 2022, Section 148(5).

⁴⁸ Director of Public Prosecutions v. Daudi Pete [1993] TLR 22.

circumstances.⁴⁹ For example, in *Republic v. Ally Mohamed*, different outcomes were issued for similar offences without proper justification, reflecting unequal treatment before the law.⁵⁰

The law does not require judges to consider key factors like risk of absconding, seriousness of the offence, or interference with justice.⁵¹ Nor is there a requirement for courts to provide written reasons when denying bail, especially in lower courts. This lack of transparency makes it difficult to appeal or detect bias, weakening accountability.⁵² These issues ultimately undermine constitutional guarantees under Article 13 of the Tanzanian Constitution and result in unnecessary pre-trial detention or the release of high-risk individuals.⁵³

4.4 Non-Bailable Offences and Their Impact on Rights

Section 148(5) of the Criminal Procedure Act restricts courts from granting bail in serious offences like murder, terrorism, and armed robbery.⁵⁴ While meant to protect public safety, this rigid provision denies courts the ability to consider the unique facts of each case, even when the accused poses no real risk.

As a result, many individuals remain in prolonged remand detention, contributing to prison overcrowding and delays in justice. According to the 2023 Human Rights Report by the Legal and Human Rights Centre, over 52% of remand detainees are

⁴⁹ Chande, O. “Judicial Discretion in Granting Bail in Tanzania,” *Journal of African Law*, Vol. 45, No. 2, 2019, pp. 204–210.

⁵⁰ *Republic v. Ally Mohamed*, [2002] TLR 187.

⁵¹ Criminal Procedure Act, Cap 20 R.E 2022, Section 148.

⁵² Rwezaura, B. A., “The Challenge of Transparency in Tanzania’s Bail System,” *Tanzania Legal Review*, Vol. 6, 2021, pp. 45–52.

⁵³ The Constitution of the United Republic of Tanzania, 1977, Article 13.

⁵⁴ Criminal Procedure Act, Cap 20 R.E 2022, Section 148(5).

awaiting trial, many for non-bailable offences.⁵⁵ This not only burdens the justice system but also violates the right to liberty and the presumption of innocence under Article 13(6)(b) of the Constitution and international human rights treaties such as the ICCPR.⁵⁶

4.5 Does the Mandatory Denial of Bail for Specific Offences Violate the Principle of Presumption of Innocence in Tanzania?

The mandatory denial of bail for specific offences in Tanzania poses a serious threat to the constitutional principle of the presumption of innocence. Article 13(6)(b) of the Constitution of the United Republic of Tanzania, 1977 affirms that every person is presumed innocent until proven guilty¹. This principle is echoed in international law under Article 14(2) of the International Covenant on Civil and Political Rights (ICCPR), ratified by Tanzania².

However, Section 148(5) of the Criminal Procedure Act, Cap. 20 [R.E. 2022], designates certain offences—such as murder, terrorism, drug trafficking, treason, and armed robbery—as non-bailable³. This means courts are legally prohibited from granting bail in these cases, regardless of individual circumstances. As a result, accused persons are subjected to automatic pre-trial detention solely based on the offence charged, not on the merits of the case.

This statutory blanket denial undermines the presumption of innocence by treating accusation as sufficient ground for incarceration. It denies the accused the opportunity to be considered for release based on factors such as the risk of

⁵⁵ Legal and Human Rights Centre, “Tanzania Human Rights Report 2023,” LHRC Publications, Dar es Salaam, 2023, p. 78

⁵⁶ International Covenant on Civil and Political Rights (ICCPR), Article 9(3);

absconding, prior criminal record, or the strength of the evidence. Additionally, delays in trial proceedings often lead to prolonged pre-trial detention, which effectively becomes punishment without a conviction. According to the 2023 Legal and Human Rights Centre Report, over 52% of remand detainees are awaiting trial, with many facing non-bailable offences⁴.

The landmark case of DPP v Daudi Pete emphasized that bail is a constitutional right and warned against mechanical application of statutory law that overrides constitutional guarantees⁵. Yet, under current law, judicial officers lack discretion to ensure fairness on a case-by-case basis.

Furthermore, this framework disproportionately harms poor and legally unrepresented individuals, who lack the means to challenge pre-trial detention through constitutional petitions or appeals. This creates inequality in access to justice and erodes public trust in the fairness of the legal system.

In conclusion, the mandatory denial of bail contradicts Tanzania's constitutional and international obligations by undermining the presumption of innocence, promoting prolonged pre-trial detention, and enabling unequal treatment. Legislative reform is urgently needed to restore judicial discretion and uphold the rule of law.

4.6 Does the Lack of Procedural Transparency in Bail Decisions Affect the Accountability of the Tanzanian Judiciary?

Procedural transparency in judicial decision-making is a fundamental aspect of the rule of law and judicial accountability. Transparency requires that courts provide

clear, reasoned explanations for their decisions, enabling parties, oversight bodies, and the public to understand the rationale behind rulings. In the context of bail determinations in Tanzania, a significant legal challenge arises from the frequent absence of documented reasons for granting or denying bail, especially in lower courts. This lack of procedural transparency undermines the accountability of the judiciary and weakens the overall justice system.

Under Tanzanian law, while there is no explicit statutory requirement compelling courts to provide written reasons for bail decisions, such practice is essential to ensure fairness and uphold the constitutional right to a fair trial.⁵⁷ The failure to record or provide reasons for bail denials creates several serious problems. First, it denies the accused person meaningful access to appellate or supervisory courts. Without a clear record of the grounds for refusal, appeals against bail decisions become almost impossible.⁵⁸ Accused persons, particularly those without adequate legal representation, are left with no avenue to challenge what may be arbitrary or unjust rulings. This situation not only violates the right to appeal guaranteed under Article 13(6)(b) of the Constitution of the United Republic of Tanzania, 1977, but also infringes on the broader right to fair administrative justice.⁵⁹

Secondly, the lack of transparency hampers judicial oversight and internal accountability mechanisms. When courts do not document their reasoning, higher courts and judicial bodies cannot effectively monitor or evaluate the consistency, legality, and fairness of bail decisions. This absence of oversight increases the risk of biased or discriminatory practices remaining unchecked. For instance, decisions may

⁵⁷ Criminal Procedure Act, Cap. 20 R.E 2022 (Tanzania), Section 148

⁵⁸ Ibid

⁵⁹ The Constitution of the United Republic of Tanzania, 1977, Article 13(6)(b).

be influenced by improper considerations such as ethnicity, gender, or socio-economic status, rather than objective legal criteria.⁶⁰ Without transparency, it is difficult to identify patterns of such bias or arbitrariness and take corrective action.

Moreover, transparency fosters public confidence in the judiciary. In Tanzania, as in many countries, the criminal justice system faces challenges related to perceptions of corruption, inefficiency, and unfairness.⁶¹ When bail decisions are made behind closed doors with no explanation, public trust erodes. Citizens may perceive the system as secretive and partial, which can discourage cooperation with law enforcement and weaken respect for legal institutions. Transparent reasoning not only educates the public about legal standards but also demonstrates that courts operate impartially and according to the law.

The problem is exacerbated in lower courts, where most bail decisions are made. These courts often lack sufficient resources and training, and judges or magistrates may not fully appreciate the importance of documenting decisions.⁶² Furthermore, accused persons in lower courts are less likely to have legal counsel to assist them in demanding reasons or appealing bail rulings. This creates a systemic disadvantage for marginalized groups who are most vulnerable to unfair detention.

Comparatively, jurisdictions with stronger procedural safeguards require courts to provide detailed written reasons for bail decisions. For example, in South Africa, the Criminal Procedure Act mandates that judges record their reasons for refusing

⁶⁰ Chande, O., “Judicial Discretion in Granting Bail in Tanzania,” *Journal of African Law*, Vol. 45, No. 2, 2019, pp. 204–210.

⁶¹ Legal and Human Rights Centre, “Tanzania Human Rights Report 2023,” LHRC Publications, Dar es Salaam, 2023, p. 67.

⁶² Rwezaura, B. A., *op. cit.*, pp. 47–48.

bail, which supports judicial transparency and allows effective appellate review.⁶³Such frameworks help to standardize bail procedures and reduce arbitrary decision-making.

In Tanzania, reform efforts could include legislative amendments to require written reasons for all bail decisions, judicial training on the importance of transparency, and improved access to legal aid for accused persons. Implementing these measures would enhance accountability by making it easier to identify and correct injustices. It would also align Tanzania's criminal justice system with constitutional mandates and international human rights standards, such as those under the ICCPR.⁶⁴

4.7 Comparative Analysis of Legal Challenges on the Determination of Bail in Tanzania with Other African Countries

The determination of bail poses significant legal challenges across many African jurisdictions. However, the intensity and nature of these challenges vary due to differences in constitutional frameworks, statutory provisions, judicial discretion, and the existence (or lack thereof) of bail policy guidelines. Tanzania's legal framework, particularly under Section 148 of the Criminal Procedure Act, Cap 20 R.E. 2022, has attracted criticism for its rigidity, especially regarding non-bailable offences, insufficient judicial discretion, and lack of standard criteria for bail decisions. This section compares the Tanzanian position with select African countries—specifically South Africa and Kenya to draw insights on how other jurisdictions confront similar bail-related challenges.

Criminal Procedure Act 51 of 1977 (South Africa), Section 60(5)

⁶⁴ International Covenant on Civil and Political Rights (ICCPR), Article 9(3)

4.8.1 South Africa

South Africa adopts a constitutional and human rights–based approach to bail. Section 35(1)(f) of the Constitution of the Republic of South Africa, 1996 provides that every arrested person “has the right to be released from detention if the interests of justice permit.”⁶⁵This provision establishes a presumption in favour of bail, which is further reflected in the Criminal Procedure Act 51 of 1977.⁶⁶

In South Africa, bail may be denied only if the prosecution proves that it is not in the interest of justice. Courts consider a range of factors, including the seriousness of the offence, risk of flight, interference with witnesses, and public interest. Importantly, there is no absolute categorization of non-bailable offences. Instead, bail decisions are individualized and subject to review.

Compared to Tanzania, South Africa’s legal system allows greater judicial discretion and promotes transparency and consistency through extensive judicial interpretation. Moreover, South African courts provide written rulings explaining why bail is granted or denied—something that is not consistently practiced in Tanzanian magistrate courts. This enhances legal certainty and the right to fair trial.

4.8.2 Kenya

Kenya’s bail framework is rooted in Article 49(1)(h) of its 2010 Constitution, which guarantees the right to bail unless there are “compelling reasons” for denial.⁶⁷This provision reverses the presumption against bail for serious offences found in Tanzania.

⁶⁵ Constitution of the Republic of South Africa, 1996

⁶⁶ Criminal Procedure Act 51 of 1977

⁶⁷ Constitution of Kenya, 2010, Article 49(1)(h)

To operationalize this constitutional right, Kenya introduced the Bail and Bond Policy Guidelines in 2015.⁶⁸ These guidelines address challenges like inconsistency in bail decisions, lack of transparency, and failure to consider socio-economic factors. The guidelines also outline procedures for determining whether an accused poses a flight risk, is likely to interfere with witnesses, or is a danger to public safety.

Kenya's framework provides a useful model for Tanzania. The Tanzanian judiciary lacks a national bail policy or guidelines that could harmonize decisions across courts and mitigate arbitrary or inconsistent bail determinations. Furthermore, unlike in Kenya, Tanzanian magistrates are barred from entertaining bail applications in certain serious offences, even when circumstances might warrant release.

4.9 Analysis of Research Hypothesis in Light of Findings and Research Objectives

The central hypothesis guiding this research posits that “The current bail determination process in Tanzania lacks standardized criteria on non-bailable offences in the administration of justice.” Upon evaluating the findings obtained through both library-based research and document analysis, this hypothesis has been affirmatively validated. The results reveal a critical lack of consistency, fairness, and clarity in the application of bail laws, particularly in the context of non-bailable offences under Section 148(5) of the Criminal Procedure Act. Furthermore, even in bailable cases, the absence of formal guidelines leaves room for significant discrepancies, discretionary abuse, and unequal treatment of accused persons.

⁶⁸ Kenya Judiciary. (2015). Bail and Bond Policy Guidelines.

The research found that non-bailable offences are treated with a rigid, statutory bar that prevents courts from considering the personal circumstances of the accused. Even when strong guarantees are available, or when there is minimal risk of flight or interference with evidence, courts remain bound by law to deny bail. This leads to prolonged pre-trial detention and contributes to congestion in remand facilities. From a legal and human rights perspective, such a system lacks the flexibility and proportionality required in a fair judicial process.

The findings also indicate that in bailable offences, the decision to grant or deny bail heavily depends on the individual discretion of judges and magistrates, without any codified standard of practice. This discretionary model lacks procedural safeguards and permits personal biases or external pressures to influence judicial decisions. In certain cases, as demonstrated in *Republic v. Ally Mohamed*, two individuals with similar charges and backgrounds received different bail outcomes without sufficient reasoning recorded.¹ Such inconsistencies undermine the principle of equality before the law and suggest systemic gaps in judicial decision-making.

These findings directly respond to and confirm the first specific objective of the study: “To assess the extent to which lack of standardized criteria for bail hearings contributes to inconsistent bail decisions.” Through analysis of legal texts and reported cases, the research clearly shows that in the absence of binding guidelines or judicial precedents, bail decisions vary widely from one court to another. This not only weakens public trust in the criminal justice system but also gives rise to perceptions of partiality and potential corruption.

In relation to the second specific objective “To examine the current legal framework on non-bailable offences so as to come up with proper legal structure on non-bailable offences”the research demonstrates that the existing legal framework is excessively rigid and mechanical, denying the courts the ability to weigh individual case merits. Although the intention of Section 148(5) is to protect society from serious crimes, its blanket application leads to unjust outcomes for many accused persons who may later be acquitted after years in detention. The legal regime, as it stands, fails to accommodate exceptional cases or distinguish between varying degrees of risk posed by different individuals.

Therefore, a strong legal recommendation emerging from this research is the urgent need for law reform. This reform should aim at introducing risk-based assessment tools that allow courts to evaluate bail eligibility based on objective indicators such as likelihood of flight, history of previous offences, strength of evidence, and potential threat to public safety. Such reforms would enhance judicial discretion, safeguard fundamental rights, and restore the balance between individual liberty and societal protection.

CHAPTER FIVE

OVERVIEW OF THE STUDY, FINDINGS, CONCLUSION AND RECOMMENDATIONS

5.1 Overview of the study

This research titled *“THE LEGAL CHALLENGES ON DETERMINATION OF BAIL IN MAINLAND TANZANIA,”* aimed to examine the difficulties within Tanzania’s legal system concerning how bail is granted, especially for serious offences classified as non-bailable under Section 148(5) of the Criminal Procedure Act R.E 2022 .The research was guided by the hypothesis that the current bail determination in Tanzania section

148(5) of the criminal procedure Act R.E 2022 lacks standardized criteria on non bailable offenses such as murder, drug trafficking, treason in the Administration of Justice. The main objective of the research was to investigate the legal challenges faced in determining bail in Tanzania criminal Justice system so as to ensure good flow of administration of justice. specific objective of the research firstly is to examine current legal framework on non bailable offenses so as to come up with proper legal framework on non bailable offenses and secondly is to assess the extent to which lack of standardized criteria for bail hearings contributes to inconsistent bail decisions. A doctrinal (library-based) methodology was used, relying on books, statutes, case laws, and international legal instruments to analyze the issues and suggest reforms.

Findings & Discussion

This research titled “*THE LEGAL CHALLENGES ON DETERMINATION OF BAIL IN MAINLAND TANZANIA*” set out to explore the legal and procedural challenges associated with the determination of bail in Tanzania, focusing particularly on inconsistencies in bail decisions and the restrictions placed on courts by statutory provisions such as Section 148(5) of the Criminal Procedure Act. The research revealed several important findings that highlight serious gaps in the current bail system and its impact on the administration of justice.

One of the most significant findings is the absence of standardized criteria used by judicial officers in bail determinations. While bail is granted at the discretion of the court, there are no established guidelines that direct how such discretion should be

exercised. As a result, courts make bail decisions based on varying interpretations of the law, leading to inconsistencies and unequal treatment of accused persons. Two individuals charged with similar offences may receive entirely different outcomes depending on the presiding magistrate or judge. This inconsistency undermines the principle of equality before the law and weakens public trust in the criminal justice system.⁶⁹

Furthermore, the study found that the legal framework especially Section 148(5) of the Criminal Procedure Act [R.E. 2022] creates a blanket restriction on bail for specific serious offences such as murder, terrorism, and drug trafficking. This provision removes the court's ability to evaluate each case on its merits, even when the accused person poses no risk of fleeing, interfering with evidence, or committing another offence. The result is automatic denial of bail, which contradicts the constitutional principle of presumption of innocence enshrined under Article 13(6) (b) of the Constitution of the United Republic of Tanzania.⁷⁰

Instead of assessing an accused person's individual circumstances, courts are compelled by law to deny bail solely based on the charge, which may not reflect the reality of the case.

This legal rigidity contributes to prolonged pre-trial detention, especially for individuals charged with non-bailable offences. The Legal and Human Rights Centre (LHRC) has reported that over 52% of remand detainees in Tanzania are awaiting trial, with many being held simply because their offences fall under the

⁶⁹ Republic v. Ally Mohamed, High Court of Tanzania

⁷⁰ Constitution of the United Republic of Tanzania, 1977, Article 13(6)(b)

non-bailable category.⁷¹ This situation not only overcrowds prisons but also subjects unconvicted individuals to harsh detention conditions for months or even years, effectively punishing them before a trial has been conducted. It is a serious violation of both national constitutional protections and international human rights standards.

Another major finding is the lack of procedural transparency in bail decisions. In most cases, judicial officers are not required to provide written reasons for granting or denying bail, particularly at the magistrate level. This lack of reasoning limits the ability of accused persons to appeal decisions or understand the legal basis behind their continued detention. It also makes it difficult to detect whether improper considerations such as bias, discrimination, or external influence have influenced the decision.⁷² Without written judgments, there is no accountability mechanism for ensuring that judicial discretion is exercised fairly and in accordance with the law.

The study also discovered that the current bail system disproportionately affects the poor and unrepresented. Many accused persons in Tanzania, particularly those from rural areas, are unaware of their legal right to bail or lack access to legal representation to advocate for their release. Even when bail is granted, the conditions attached such as high monetary bonds or multiple sureties are often unaffordable, effectively detaining the accused through financial incapacity.⁷³ This creates a system where wealthier individuals are more likely to secure bail, while the poor remain incarcerated for extended periods.

⁷¹ Legal and Human Rights Centre (LHRC), Tanzania Human Rights Report, 2023.

⁷² Commission for Human Rights and Good Governance (CHRAGG), Annual Report on Human Rights and Good Governance in Tanzania, 2021.

⁷³ Mgaya, A., Access to Justice and Fair Trials: The Case of Bail Application Processes in Tanzania, 2019.

In addition, the research identified the absence of risk-based assessment tools in the Tanzanian bail process. In many jurisdictions, courts use structured tools to evaluate factors such as the accused's likelihood to flee, potential threat to public safety, or the risk of interfering with witnesses. These tools help to ensure objectivity and consistency. In Tanzania, however, such tools are not used, leaving bail decisions largely to personal judgment, which may be influenced by prejudice or lack of information.⁷⁴

Finally, the wide and unchecked discretion afforded to magistrates and judges in bailable offences creates further challenges. While discretion is necessary to account for individual case circumstances, the lack of standardized procedures or performance oversight opens the door to abuse of power, arbitrary rulings, and, in some cases, corruption.⁷⁵ This discretionary imbalance reduces the credibility of the judicial system and compromises the right to a fair trial.

5.2 Conclusion

The research concludes that the bail determination process in Mainland Tanzania faces serious legal and procedural challenges. The key issues include the absence of standardized criteria, rigid laws like Section 148(5) of the Criminal Procedure Act that deny bail for certain offences, and a lack of transparency in judicial decisions. These challenges undermine the principles of fairness, the presumption of innocence, and equal access to justice. The study emphasizes the urgent need for legal reforms that will allow courts to assess bail applications based on individual

⁷⁴ Wefelmeyer, J. J., *Legal Complexities in Bail Determination for Criminal Offences in Tanzania*, 2021.

⁷⁵ Iddi, J., *Balancing Liberty and Public Safety in Bail Determination under Tanzanian Law*, 2020.

circumstances and ensure consistency, fairness, and respect for human rights in the criminal justice system.

5.3 Recommendations

In light of the above conclusions, this research proposes the following recommendations aimed at addressing the identified legal challenges in bail determination in Tanzania Mainland:

Firstly Legislative Reforms to Introduce Standardized Bail Criteria

The Tanzanian legislature should amend the Criminal Procedure Act to provide clear, standardized criteria that judicial officers must consider when making bail decisions.⁷⁶ This reform should allow courts to exercise discretion by evaluating the individual merits of each case, even in offences currently classified as non-bailable. Such criteria could include the seriousness of the offence, risk of flight, likelihood of interference with witnesses or evidence, the accused's criminal history, and community ties. This would ensure that bail decisions are consistent, fair, and based on objective considerations rather than arbitrary discretion.

Secondly Development and Implementation of Judicial Guidelines

The judiciary should develop comprehensive guidelines to assist magistrates and judges in applying the new bail criteria uniformly. These guidelines should be integrated into judicial training programs to sensitize judicial officers on fair bail practices and human rights standards. Regular refresher courses would help maintain consistency and address emerging challenges in bail determination.

⁷⁶ Proposal for Bail Reform Bill, Ministry of Justice, Tanzania 2024

Thirdly Introduction of Risk Assessment Tools

The use of scientifically validated risk assessment tools should be institutionalized to objectively evaluate the likelihood of flight or reoffending.⁷⁷ These tools will aid courts in making informed decisions and minimize subjective biases. Countries with advanced criminal justice systems have successfully used such tools to improve bail determinations, and Tanzania can benefit from adapting similar models tailored to its local context.

Fourthly Enhance Transparency and Accountability in Bail Decisions

It is crucial to mandate written reasons for all bail decisions, particularly when bail is denied. This requirement will promote transparency, allow for judicial oversight, and reduce arbitrary or discriminatory rulings. Establishing appellate or review mechanisms for bail decisions could further ensure accountability and protect the rights of the accused.

Fifthly Promote Alternatives to Pre-trial Detention

Courts should be encouraged to explore alternatives to detention such as conditional bail, sureties, or electronic monitoring, especially for non-violent accused persons.¹² Implementing such measures can reduce congestion in remand prisons, lower costs, and uphold the presumption of innocence. Legal frameworks should be amended to formally recognize and regulate these alternatives.

Sixthly Harmonize Bail Procedures with International Human Rights Standards

⁷⁷ L. Smith and J. Robert's, Risk Tools in Bail Decision Making: A comparative study, 2021

Tanzania must align its bail procedures with obligations under international treaties such as the International Covenant on Civil and Political Rights (ICCPR), which guarantees the right to liberty and presumption of innocence.⁷⁸ Incorporating these principles into domestic law will improve human rights compliance and enhance the legitimacy of the justice system.

Seventhly Foster Multi-Stakeholder Collaboration

Effective reform requires collaboration between the judiciary, legislative bodies, legal practitioners, human rights organizations, and civil society. Establishing a task force or working group to monitor bail practices and recommend improvements could facilitate ongoing dialogue and ensure reforms are practical and responsive to evolving needs.⁷⁹

Eighthly Public Awareness and Legal Aid Support

Raising awareness among accused persons and the public about bail rights is essential. Legal aid services should be strengthened to assist accused persons in applying for bail, particularly for vulnerable groups.⁸⁰ Empowered individuals are better able to exercise their rights and challenge unlawful detention.

⁷⁸ International covenant on Civil and Political Rights (ICCPR), adopted 1966

⁷⁹ Tanzania Law Society, Stakeholder Report on Bail Reforms, 2023

⁸⁰ Legal Aid Tanzania, Annual Report on Access to Justice, 2023

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