

# **RUAHA CATHOLIC UNIVERSITY**



**(RUCU)**

## **EXAMINATION OF THE LAW AND PRACTICE IN PROTECTING RIGHTS VIOLATED DURING CAUTIONED STATEMENT IN TANZANIA**

**A Research Paper Submitted in Partial Fulfillment of the Requirements for the Award  
of the Bachelor of Laws Degree of the Ruaha Catholic University.**

**By**

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**646/LLB/T/2017**

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**July, 2021**

**CERTIFICATION**

The undersigned certifies that, I have read and understand and hereby recommends for acceptance by the Ruaha Catholic University, a research paper titled: Examination of the law and practice in protecting rights violated during cautioned statement in Tanzania, in partial fulfilment of requirements for award of the degree of Bachelor of Laws (LL.B) of the Ruaha Catholic University.

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Signed at Iringa on this .....Day of.....2021

## **DECLARATION**

I, Ansleth R. Mteweale do hereby declare that this dissertation is my own original work and that it has not been submitted or currently being submitted to any other University for a similar or any other degree.

.....

Ansleth R. Mteweale

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**DEDICATION**

This work is dedicated to all those who dedicated their lives to make sure that the Bill of Rights were incorporated in the Tanzania Constitution in 1984.

## LIST OF ABBREVIATIONS

ACHPR	African Charter on Human and Peoples' Rights
A.C	Appeal Cases
ALL ER	All Law England Report
CAP	Chapter
CAT	Court of Appeal of Tanzania
CPA	Criminal Procedure Act
CURT	Constitution of the United Republic of Tanzania
D.P.P	Director of Public Prosecution
EA	East Africa
EACA	East Africa Court of Appeal
Ed	Edition
HC	High Court
ICCPR	International Covenant on Civil and Political Rights
No.	Number
P	Page
Q.B	Queens Bench
R	Republic
R.E	Revised Edition
RPC	Regional Police Commander
TEA	Tanzania Evidence Act
TLR	Tanzania Law Report
UDHR	Universal Declaration for Human Rights
Vs.	Versus

## **LIST OF LEGAL INSTRUMENTS**

### **INTERNATIONAL INSTRUMENTS**

*The Universal Declaration of Human Rights*, 1948

*The International Covenant on Civil and Political Rights*, 1976

*The Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment*, 1987

*Rome Statute on International Criminal Court*, 1998

### **REGIONAL INSTRUMENTS**

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

### **DOMESTIC LEGISLATIONS**

*The Constitution of the United Republic of Tanzania*, [Cap 2 of 1977 as amended from time to time]

*The Criminal Procedure Act*, [Cap 20 R.E 2019]

*The Tanzania Evidence Act*, [Cap 6 R.E 2019]

*The National Prosecution Service Act*, No. 10 of 2008

*The Police Force and Auxiliary Service Act* [Cap 322 RE 2002]



## LIST OF CASES

*Gervas Kilongozi vs. R*, [1994] TLR 39 CA

*Ibrahim vs. R*, (1914) A.C 599 at 609

*John Peter Shao vs. R*, [1998] TLR 198

*Josephat Somisha Maziku vs. R*, [1992] TLR 227

*Mathei Fidoline Haule vs. R*, [1992] TLR 148

*Mkareh vs. R*, (1971) HCD 74 (AC)

*Nayinda vs. R*, (1959) EA 688

*Ndorosi Kudekei vs. R*, Criminal Appeal No.318 of 2019 Court of Appeal at Arusha (Unreported)

*Njuguna Kimani and others vs. R*, [1954] 21 EACA 316

*Omary Mohamed Marukula vs. R*, Criminal Appeal No. 195 of 2019 High Court of Tanzania at Dar Es Salaam (Unreported)

*Pakala Narayan Swami vs. Emperor*, [1939] ALL ER 396

*R vs. Bampamiyki*, [1975] EA 473

*Ramadhani Salum vs. R*, Appeal case No.5 of 2007 HC of Tanzania at Mwanza (Unreported)

*Rudolf Chavula vs. Athuman*, [1982] TLR 100

*Samuel Ayo Omoju vs. The Federal Republic of Nigeria*, (2008) supreme court cases

*Twaha Ali and 5 others vs. R*, Criminal Appeal No.78 of 2004 CAT (Unreported)

*Usung vs. State*, (2009) ALL EWLK (Pt 462)

## ABSTRACT

Most aspect of criminal justice system in Tanzania is made up of three distinctive inter-dependent components such as; *the police, the courts* and *the prisons*. The assessment of Police in taking cautioned statements, in the conduct of criminal investigation machinery in Tanzania is the study engaged on criminal law and procedure with a view to determining the research hypothesis posed by the researcher to the effect that the law governing the conduct of taking cautioned statements is not effective enough to warrant timely and effective justice delivery. The accused rights violated during the obtaining cautioned statement process in Tanzania has been a big problem in the whole concept of justice, since it brings about the doubt about the efficiency of police officers in performing their duty. The duty of criminal investigation has been vested by the police force and the laws govern such investigation is Criminal Procedure Act, the Tanzania Evidence Act, and the Police and Auxiliary Service Act. Whereas the public prosecution is rely on the newly enacted laws under The National Prosecution Service Act.

The study among other things intends to point out the reason in occurrence of violation of accused person's rights during the whole process of obtaining cautioned statement. The research seeks to determine on the view that the violation of the procedural laws is resulted by abusive power and mischief of laws used by some police officers who conducting such cautioned statement. However, this paper apart from pointing out the problems facing during taking cautioned statement process, and reasons as to why such problems occur. It has subsequently provided from some recommendations including appropriate education particularly legal knowledge for police officers who conducted investigation, to create a good relationship with the community so as to seek easy information as a good evidence in their cases, to employ the number of investigative technique to investigate and undercover

operations, controlled delivery, and use informers, surveillance and interceptions method in identified the accused person rather than mob arresting which is a the outdated method and infringing the people's rights. Basically, by considering the above recommended measures, the investigation of criminal cases will be made fast and as a result the credit of the people and trust will go out to police force.

## Table of Contents

CERTIFICATION .....	i
DECLARATION .....	ii
STATEMENT OF COPYRIGHT .....	ii
ACKNOWLEDGMENT .....	iv
DEDICATION.....	v
LIST OF ABBREVIATIONS .....	vi
LIST OF LEGAL INSTRUMENTS.....	vii
DOMESTIC LEGISLATIONS .....	vii
LIST OF CASES .....	viii
ABSTRACT .....	ix
CHAPTER ONE.....	1
GENERAL INTRODUCTION .....	1
1.1 Introduction.....	1
1.1 Background of the problem .....	2
1.2 Statement of the Problem.....	6
1.3 Literature Review.....	6
1.4 Research Hypothesis .....	11
1.5 Objectives of the Research.....	11
1.5.1. General objectives .....	11
1.5.2. Specific Objectives.....	12
1.6 Significance of the Study .....	12
1.7 Research Methodologies .....	12

1.7.1 Primary Source .....	13
1.7.2.Primary method of data collection .....	13
1.7.3 Secondary Source .....	14
1.8 SCOPE AND LIMITATION OF THE STUDY .....	14
1.8.1 Scope of the research.....	14
1.8.2Limitation of the research .....	15
CHAPTER TWO.....	16
THE CONCEPTUAL FRAMEWORK, BACKGROUND AND PURPOSE OF THE CAUTIONED STATEMENT IN TANZANIA .....	16
2.1 CONCEPTUAL FRAME WORK .....	16
2.1.1 Introduction .....	16
2.2 Confession.....	16
2.2.1 Meaning of confession .....	16
2.2.2Background of the confession .....	18
2.3 Cautioned Statement .....	21
2.3.1 Meaning of Cautioned Statement.....	21
2.4 Purpose of Confession (cautioned statement).....	22
2.5 Exception to the General Rule that of admissibility of only confession(cautioned statement) that was made voluntary.....	23
2.6 Power of the police officer to take cautioned statement .....	23
CHAPTER THREE .....	26

THE LEGAL AND INSTITUTIONAL FRAMEWORK OF CAUTIONED STATEMENTS	
IN TANZANIA .....	26
3.0 Introduction.....	26
3.1 The international legal framework that cautioned statement to be admissible .....	26
3.1.1 Ratification of International Law in Tanzania .....	26
3.1.2 The Universal Declaration of Human Rights, 1948 .....	27
3.1.3 International Covenant on Civil and Political Rights (ICCPR),.....	28
3.1.4 Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment,.....	28
3.1.5 Rome Statute on International Criminal Court .....	29
3.2 Regional Instrument.....	30
3.2.1 African Charter on Human and Peoples’ Rights, (1981) .....	30
3.3 Domestic legal framework.....	31
3.3.1 The Constitution of the United Republic of Tanzania.....	31
3.3.2 The Criminal Procedure Act,.....	32
3.3.3 The Tanzania Evidence Act,.....	32
3.4 Institutional Framework.....	34
3.4.1 The Tanzania Police Force .....	34
3.4.2 Judiciary .....	35
CHAPTER FOUR .....	37
RESEARCH FINDINGS AND DATA ANALYSIS .....	37
4.0 Introduction.....	37
4.1 Data presentation .....	37

4.2 Data Analysis and Discussion.....	37
4.2.1 Whether the law empowered by police in criminal investigation observes the requirements and rights of accused persons as provided by the law.....	37
4.2.2. Lack of cooperation between police and the community or accused person .....	38
4.3 Research Findings .....	39
CHAPTER FIVE .....	42
CONCLUSION AND RECOMMENDATIONS .....	42
5.0 Introduction.....	42
5.1 General.....	42
5.2 Conclusion .....	43
5.3 Recommendations.....	43
5.3.1 To the Police Force .....	44
5.3.2 To the Lawmakers (Legislature) .....	44
BIBLIOGRAPHY .....	45
APPENDICES .....	46
APPENDIX I: QUESTIONNAIRE .....	47

## CHAPTER ONE

### GENERAL INTRODUCTION

#### 1.1 Introduction

This research beforehand aiming at examining the law and practice in protecting rights violated during cautioned statement before the police station, in conducting this research, the researcher was acquainted with a lot of information from both Primary and Secondary data which helped the researcher in the accomplishment of this research at hand.

The cautioned statements in Tanzania, is an extra-judicial statement of confession that provided under section 57 of *The Criminal Procedure Act*,<sup>1</sup> which provides the record of interview by a police officer when ascertaining whether the person has committed an offence or not, and before interviewing the suspect or an accused person, the police officer must be cautioned the suspect person before he made confession and such interview is being in writing, also it is supported with section 10 of *the Criminal Procedure Act*,<sup>2</sup> whereby the police officer given a power to investigate the person who committed an offence. For confession to be taken into consideration, it must be voluntarily made by the accused person to the proper authority that is the police officer, court magistrate and justice of the peace as per section 28 of *Tanzania Evidence Act*.<sup>3</sup>

However, during Investigation in the stage of cautioned statements there are so many claims about the method used in obtaining such statements from accused persons, to which this particular research has centered in examining the procedure itself and the laws governing the procedures on how the rights of an accused person protected during this particular procedure

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<sup>1</sup>*The Criminal Procedure Act* [Cap 20 R:E 2019]

<sup>2</sup> *Ibid*

<sup>3</sup> *ibid*



before the police station.<sup>4</sup> Since a confession is important if properly made because it helps in finding a true a guiltiness of the accused person as she or he freely acknowledges the guilt to the offence. And also protects the rights of not only accused persons but also of those who are innocent as per Article 13 (6) (b) and (e) of *The Constitution of United Republic of Tanzania*.<sup>5</sup> Whereby in sub Article (6) (b), provides for the presumption of innocence; “*No person charged with a criminal offence shall be treated as guilty of the offence until proved guilty of that offence*” and also in sub Article (6) (e), provides the for the act against torture or inhuman; “*No person shall subjected to torture or inhuman or degrading punishment or treatment*”.

In this chapter there are about six parts, which are the background of the problem, statement of the problem, objectives of the research, significance of the research, research questions, literature review and research methodology as explained hereunder.

## **1.1 Background of the problem**

Confession has been used as evidence in court for a long time, the position before 1980, the *Tanzania Evidence Act* under section 27, provides that the confession (cautioned statements) to a police officer was not admissible and section 28-33 were the exception to the general rule in section 27. As evidenced in the case of *Mkareh vs. R*,<sup>6</sup> the evidence adduced by the accuser’s neighbor, a police corporal who testified that, the appellant called him and said, “I have killed, go in and see” and he showed him the dead body of his wife. It was alleged that this evidence was inadmissible because under Section 27 of The Evidence Act (before amendment) police officers were not allowed to take any confession.

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<sup>4</sup>R. Rhirajlal, *The Code of Criminal Procedure*, (4<sup>th</sup> E.d),2005 at pg 273

<sup>5</sup>*The Constitution of United Republic of Tanzania*. [Cap 2 of 1977 as amended from time to time]

<sup>6</sup>*Mkareh vs. R* (1971) HCD 74 (A.C)

The researcher finds that the reason behind this was to avoid torture which were done by police of lower ranks to extract confession from the accused person as a way of getting promotion. Before 1980 there was no definition of a police officer and therefore the term was taken to mean all members of the police force and other legally authorized to act as police officer example in charge of prison was taken to be a police officer for the purpose of confession. Assistant Village Executive officer was taken to be a police officer and Ward Executive officer was also held to be a police officer.

But after 1980, the position of the law governing confession was changed up to date is that, the confession made to a police officer is admissible, for the purpose of the law of Evidence in Tanzania under Section 3(1) of the *Tanzania Evidence Act*,<sup>7</sup> police officer has been defined to mean any member of the police force of or above the rank of corporal. The condition for the admissibility of that confession is that; the statement must be a confession as defined under section 3(1) (a) – (d) of the *Tanzania Evidence Act*,<sup>8</sup> It must be made to a police officer, it must be made by an accused person voluntary, in proving that a confession was voluntary made lies on the prosecution side, it is shown under section 27 (2) of the *Tanzania Evidence Act*.<sup>9</sup>

The police force has been entrusted by the law to conduct investigation of the crime. The procedural law described all requirements which have to be followed by police so as to ensure justice to individuals. Thus includes some reference such as per section 53 up to section 58 of the *Criminal Procedure Act*,<sup>10</sup> provides rights and treatments of the person under restraint, Article 13 (6) (b) of the *Constitution of United Republic of Tanzania*,<sup>11</sup> which states that “no person shall be held liable until he is proved guilty.” Justice gives to as been described as the

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<sup>7</sup>The Evidence Act

<sup>8</sup> *Ibid*

<sup>9</sup>The *Tanzania Evidence Act* *Ibid*

<sup>10</sup> [Cap 20 R.E 2019]

<sup>11</sup>*The Constitution of United Republic of Tanzania* [Cap 2 of 1977 as amended from time to time]

virtue by which it gives to every man what is his dues as opposed to injury or wrong. Hence when connecting justice with legal matter it usually means justice according to law and this entails fairness, equality and treatment according to law. Also under Article 13 (6) (e) of *the Constitution of United Republic of Tanzania*,<sup>12</sup> provides that “no person shall be subjected to torture or inhuman or degrading punishment or treatment.”

Later on the Parliament decided to enacted the law relating to prosecution known as, *The National Prosecution Service Act* 2008, which became into force on 4<sup>th</sup> May 2008.<sup>13</sup> The aim was to separate police from investigation and prosecution before the court. Hence, this system made police to perform their duty effectively and assist the court to reach into final decision of the case easy due to availability of evidences. Delaying completion of investigation observed as a major source of floodgate of court cases which made public complains about the court efficiency.

This part also is supported by the commission of Msekwa, known as Msekwa commission.<sup>14</sup> As stated that,

*“having observed the inappropriateness of the police force being responsible for arrest, investigation, and prosecution before the court. He recommended that a national wide prosecution department should be separated from the police force which deals with investigation activities. He insisted that the police force should be left to concentrate in prevention and detention of crimes in the society. He further he recommended that all activities relating to the prosecution be centralized under the office of the DPP. Technical advisor has been engaged by the government to assist the DPP in the streamlining and civilizing the prosecution system.”*

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<sup>12</sup> *Ibid*

<sup>13</sup> *The National prosecutions Service Act*, NO 10 Act Supplement July,2008

<sup>14</sup> Recommendation of Msekwa Report of Judicial System Review Commission of 1977

However this has not yet being done hence there is a need to speed up the said separation.

Apart from provision of law descriptions above which put the suspect of the crimes in the safe position still there has been the violation of the human rights in investigation machinery. The rude method is still used in the investigation process, as well as the innocent person has been punished owing to errors in investigation process. This position turns the researcher to determine on why police still going contrary with the law though there are provisions for protection of individual rights during the investigation of crimes.

Therefore, the researcher continues in focusing on an efficiency made by the contemporary system of prosecution in relation of police officers in criminal procedures on the virtue of reducing the mischief of said law and natural justice as a wholly in performance their duties.

But for it to be taken as evidence it must be voluntarily made to a proper authority. Murphy Peter,<sup>15</sup> “in common practice, voluntary means simply of ones will”. Until 1986, police questioning of suspects was conducted within the framework of the common law on involuntary confessions and the rules of practices for police officers set out in the judges’ rules. So that the police officers investigating crime were required to caution the suspect that he need not say anything at a fairly early stage of the investigation; to charge him as soon as they had sufficient evidence to bring the case before court; and thereafter.

For confession to be taken into consideration it must be voluntarily made by the accused person to the proper authority that is the police officer, court magistrate and justice of the peace as it is shown in the *Tanzania Evidence Act*.<sup>16</sup>

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<sup>15</sup> R.Rhirajlal, ( *The Code of Criminal Procedure*, (4<sup>th</sup> E.d), 2005, at pg 273

<sup>16</sup>The Evidence Act Section 27 (1), Section 28

## 1.2 Statement of the Problem

The problem to this particular research is that the law has vested power to a police to conduct cautioned statement, but in doing this procedure there are number of claims about this procedure specifically accused person are claiming that there is a serious violation of rights to accused person from police, However the researcher is interested with those claims that's why he is aiming at examining the law and practice in doing this cautioned statement if protects rights of accused persons.

Thus includes to the violation of the provisions of laws such as Article 13(6) (b) of *the Constitution of United Republic of Tanzania*, which states that “*no person shall be held liable until he is proved guilty.*” Justice gives to as been described as the virtue by which it gives to every man what is his duties as opposed to injury or wrong. Hence when connecting justice with legal matter it usually means justice according to law and this entails fairness, equality and treatment according to law. Also under sub Article (6) (e), provides for the act against torture or inhuman; “*No person shall subjected to torture or inhuman or degrading punishment or treatment*”. As well as under Article 15 of CURT provides that every person has the right to live as the free person, and this guarantees preserving individual not be arbitrarily arrested, imprisoned, confined, detained or reported. Again under section 55(1) of *the Criminal Procedure Act* insist that “*a person shall, while under restraint, be treated with humanity and with respect for human dignity*”, and also subsection (2), provides that “*no person shall, while under restraint, be subjected to cruel, inhuman or degrading treatment*”.

## 1.3 Literature Review

The subject matter of this study is one under an area of law where quite a number of authors have written and have held different views but have technically arrived at the same basic

conclusion, as a result of this, various classical texts by famous scholars and jurists on the field shall be referred to.

Starting with **Willy Mutunga**,<sup>17</sup> states that violation must not be applied against an arrested person under any circumstances whatever neither police nor the public to apply it. Further says that, the practice of this nation which has corresponding acceptance the word over has been that, an arrested person ought to have any right as soon as reasonably practicable. Also, it is provided clearly under section 32(1) of *the Criminal Procedure Act. (supra)* Provides that

*“that when any person has been taken to custody without a warrant of an offence other than an offence punishable with death, then officer in charge of police station which he is brought may in any case and shall if it is may not appear practicable bring him before an appropriate court within 24 hrs after he was taken in custody.....”*

However, in Mtunga’s statement contributing much in my research he shows the rights of person which infringe with police during the investigation process, also deeply basing in statutory and procedures on which required to be observed by police in handling the arrest person as like any other person who need all rights as a human being. Despite the Mutungas’ statement about police in violation of human rights during the investigation process, he didn’t show any procedurals which may enhance the arrest person who being treated contrary of law to demand remedies from the police officer on duty or police department at large when the matters proved before the court. As Tanzania a democratic country, no one above the law, as stipulated under Art 13(1)(4) of the CURT,<sup>18</sup> that all persons are equal before the law and are entitled, without any discrimination to protection and equality before the law.

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<sup>17</sup>W. Mutunga, *The Rights of an Arrested Person and an Accused Persons*, (2<sup>nd</sup> Ed) 1990, at pg,1

<sup>18</sup> *Constitution of United Republic of Tanzania* [Cap 2 of 1977 as amended from time to time]

**Chipeta,**<sup>19</sup> in his book provided some guidance to public prosecutors and others on the basic principles of criminal procedure, criminal law, the law of evidence and the art of prosecuting cases.

He tells us that a public prosecutor is an integral part of the machinery for the administration of criminal justice. No legal system that uses public prosecutors in the dispensation of criminal justice, therefore can afford inexcusable weakness on the part of its public prosecutors. In his (Chipeta) words;-

*“...the job of public prosecutors demands intelligence, training and an interest in the job. Patience, capacity for the prosecutor with these qualities is certain to derive pleasure from the work, and is an asset to the administration of criminal justice.”*

A public prosecutor, as an officer of the court is charged with the very important duty of assigning the court in discovering the truth or otherwise of allegations against accused person. The duty of prosecutor is to present the case against accused persons by bringing all the evidence that is necessary and available and presenting it in the best manner possible, in order to reach a just conclusion.

In his work helping the researcher to understand some of reasoning contributing in case delays to be completed before the court of law which is a pure violation of accused person. Thus including that most of prosecutors go to court with little or no idea of the elements of the offence they are to prosecute, which result to delay of the case to proceed before the court of law. Coupled with collateral problems of sluggish police investigation and delay of cases, public prosecution has become the source of mess and confusion in the criminal justice in this country and violation of human rights in trials. But in his statement he didn't specify the

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<sup>19</sup>D.b.Chipeta, (1982), *Public Prosecution and the Law of Criminal Procedure: A Hand Book for Public Prosecutors* 1982 P.56

criminal machinery on how to work together as a team work between police officers and the office of state attorney (prosecutors), and how to minimize the mischief of police officer in performing their duty of investigation of the crimes.

**According to Albert j. Reiss,**<sup>20</sup> In his book *Police Brutality* has describes in detail for police conduct. He shows how police mistreatment occurred in the different violence starting with the streets the way police have been using abusing language to the suspect, also he shown the way to the police that has been used physical force which is unnecessary and as a result of pain to the individuals. Then he further shows what happening at the police station, the way suspects have been tortures so that the police and forces to make a confession, sometimes police making it without shows the rank of police officer who taking that confession, contrary to section 27(1) of *the Evidence Act*.<sup>21</sup>

Reiss discussion, contributing on my study research due to making aware the public about the rude and abusive language uses by police in interrogation of suspects. Despite the fact of, Reiss he believes that the police are brutal in criminal investigation process, but he didn't show what is the rationale behind for police to mistreat the law and he remained silence on what measures taken to overcome such problem done by the police officer.

**According to author Mapunda Benedict,**<sup>22</sup> in his journal *The responsibility of the police officer towards the community*, he discussed on laws governing police officer. He shows power which they have been conferred and their limitation. However the author did not go in deep to show the said power established by law.

In his work he believed that there is an abusive of the said power of these police officers, but he did not show what are the effect and the limit of police investigation of the criminal cases and to prosecute at the same time before the court.

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<sup>20</sup>J.A. Reiss, *Police Brutality Crime and Justice, the Criminal in Arm of the law*, (2<sup>nd</sup> E.d),1993 at pp.146-161.

<sup>21</sup> The Evidence Act[Cap 6 R.E 2019]

<sup>22</sup> M.Benedict, *Personal Freedom and Police Power in Tanzania*,2001 pg 7



**According to Gabrielle Hollingsworth,**<sup>23</sup> in the article on *Voluntary Confessions* have discussed regarding the voluntariness of the confession. He indicates that in criminal law, a confession is basically an admission of guilt that is made by the accused party. A voluntary confession is a confession that is given out of a suspect's own free will, and has not been obtained by force, coercion, or intimidation. He indicates that 14<sup>th</sup> Amendment of the U.S Constitution, due process requires that all confessions obtained by the police must be voluntary. Violations of this due process rights will make the confession statement inadmissible as evidence in court. He continues to show that the law in U.S requires that the court should prove that confession was voluntary, where he shows how it proved. There are two ways in which confessions can be proved such as "preponderance of the evidence" standard. This means that the evidence must show that the statement is more than likely voluntary. On the other hand, some states and jurisdictions require a higher standard of proof, such as a "beyond a reasonable doubt" standard. This work is vital to this study as part of literature review as it covers how voluntariness of confession can be proved.

**According to Chief Godwin Obla** cited the case of *Usung vs. State*,<sup>24</sup> where it was held that:

*"the appropriate stage to raise an objection to a confessional statement is when it is about to be tendered in evidence especially where the accused person is represented by counsel and it is assumed that he ought to know what to do at each stage of the proceedings. Any belated denial of the voluntariness of a confessional statement or its retraction is a mere afterthought."*

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<sup>23</sup>G. Hollingsworth, Paper on Voluntary Confessions, 2018 Retrieved from <https://www.legalmatch.com/law-library/article/voluntary-confessions.htm> accessed on 11th January 2021

<sup>24</sup> *Usung vs. State* (2009) All EWL (Pt 462) 1203

He continues by citing the provision of section 29 (3) of the Evidence Act where it provides that the court on its own motion can conduct trial within a trial where the prosecution proposes to give confessional statement of the accused as the evidence.

**Chief Godwin Obla** shows that though in criminal cases the burden of proof is on the prosecution to prove, the situation is different when it comes to trial within a trial where the accused required showing involuntariness of the confession. This is contrary to presumption of innocence that borne from the constitution.

#### **1.4 Research Hypothesis**

This study will be guided by the following hypotheses:-

- i. Whether the law empowered by police in criminal investigation observes the rights of accused persons as provided by the law.
- ii. Whether the police are abiding with requirement of the law and the effects of non-compliance with the provisions of the law governing cautioned statements so that to ensure justice to the accused person and victim of the crime.
- iii. That the government in establishing new system of prosecution made the police accountable in investigating crimes and performance of their duty.

#### **1.5 Objectives of the Research**

##### **1.5.1. General objectives**

This study aims to expatiate on the issues surrounding confessional statements (cautioned statement) (i.e. in the process of obtaining it and also in tendering), so that the main objective of this proposal is to examine the law and practice in protecting rights violated during

cautioned statement in Tanzania. The focus is on extent to which the involuntary confession made in the extra-judicially affects the dispensation of justice.

### **1.5.2. Specific Objectives**

The objectives of the study are;

- i. To examine the national legal framework on obtaining cautioned statement in Tanzania.
- ii. To examine the international legal framework that cautioned statement to be admissible.
- iii. To assess the rules against taking confession and right to fair treatment are violated by police force under the umbrella of exceptions to the general rule of confession.

### **1.6 Significance of the Study**

It is hoped that this work will be valuable not only for examination purposes at Ruaha University but also will add significant value to the existing literature relating to the law and practice governing cautioned statement in the country.

Also it is expected that the research will append constructive knowledge to both lawyers, policy makers, the judiciary and the government, academicians, legal practitioners, law researchers, police, prosecutors, as well as state attorneys engaged in the prosecution of cases.

### **1.7 Research Methodologies**

This Research has used primary method of data and secondary method of data collection.

### **1.7.1 Primary Source**

The researcher among other sources used primary data such as statutes, regulations, bylaws and cases relevant to the subject of research. The research used primary data for the purpose of acquiring correct information recognized by the law.

### **1.7.2. Primary method of data collection**

The researcher went to the field to collect data because he intended to get the most correct information through meeting people who were faced with this problem and knowledge within the area of his research.

#### **1.7.2.1 Interviews**

##### **Interview**

This involves a direct discussion between the interviewer (researcher) and the respondents (interviewees) in order to collect information from them. Mostly researcher basing on interview particularly in unstructured method due to minimal control over the order in which more information are covered and over respondents' answers. It is timely and minimal costful. This, allows the informant to open up, and stimulate an informant to produce more information. This approach is more preferable due to allow of interviewer to be responsive to individual differences and situational characteristics. In interviews deferent groups were contacted like magistrates, advocates, ordinary members, open prisoners and police officers.

#### **1.7.2.2 Questionnaire**

##### **Questionnaires**

Questionnaire method is among the research tools to be used by the researcher for the purpose of determining facts relating to subject or problem under research. This is the most effective

means of extracting data from respondents. Generally, it involves a number of printed questions that are sent to the respondents and the responses received from them are used for compiling data. These questions may be structured or unstructured ones. In this research, the researcher has used structured questionnaires, structured questionnaires pose definite questions.

This method it is a good method as it allows collection of data free from bias and in the process, helps to cover a large area in as far as data collection is concerned.

### **1.7.3 Secondary Source**

The researcher is expected to pass through literally works of various scholars who have been written about cautioned statement, especially on the process of taking that statement. Also researcher passed through different sources including:- books, journals, articles and dictionaries for building the strong foundation for research and for reference.

#### **1.7.3.1 Secondary method of data collection**

The researcher acquired secondary data collection from Ruaha Catholic University Library and online library. This was used because RUCU library is within compass and there was no enough time for the researcher to travel, hence it was time serving and costless. In addition RUCU library has a lot of materials which are relevant to the research and there is easy accessibility of internet.

## **1.8 SCOPE AND LIMITATION OF THE STUDY**

### **1.8.1 Scope of the research**

The study is derived from criminal procedural law and it covered to cover the right and duties of the accused or suspect person during made cautioned statement in the police custody. The

study focused on the examination of the law and practice in protecting rights violated during cautioned statements in Tanzania.

### **1.8.2 Limitation of the research**

In this study the researcher is likely to face some limitations. These limitations will be in terms of time particularly; time of the participants such as magistrates and advocates who are very crucial in attaining the goals of this study. Also, the problem is not much documented particularly in Tanzania hence hardship in preparing the literature review.

## **CHAPTER TWO**

### **THE CONCEPTUAL FRAMEWORK, BACKGROUND AND PURPOSE OF THE CAUTIONED STATEMENT IN TANZANIA**

#### **2.1 CONCEPTUAL FRAME WORK**

##### **2.1.1 Introduction**

The researcher touches the concept of cautioned statement to suspect and accused person once their arrested by the police officer. Also touches the legal frae work in relation to cautioned statement in Tanzania.

#### **2.2 Confession**

##### **2.2.1 Meaning of confession**

H.I.Dennis. provides that in an ordinary meaning confession is a frank admission of guilt.<sup>25</sup> In the case of *Pakala Narayan Swami vs. Emperor*,<sup>26</sup> the court defined a confession as “a statement, which admits substantially all the facts constituting the offence. Also in the case of *R vs. Bampamiyki*,<sup>27</sup> court ruled that “a statement should be regarded as a confession only when it contains ingredients of the crime with which the accused person is charged, so that the accused person could be properly convicted on his own plea” in the case of *R vs. Warickshall*,<sup>28</sup> it was ruled that a free and voluntary confession is deserving of the highest credit, because it is presumed to flow from the strongest sense of guilt, and therefore it is admitted as proof of the crime to which it refers. o

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<sup>25</sup> H.I.Dennis, *Police Brutality Crime and Justice, The criminal in the ArmsLaw*, (2<sup>nd</sup> E.d). New York: oxford University press (2002),. P.106

<sup>26</sup> *Pakala Narayan Swami vs. Emperor* [1939] ALL ER 396

<sup>27</sup> *R vs. Bampamiyki* [1957] EA sa473

<sup>28</sup> *R vs. Warickshall* (1783)1 Leach 263 (CCC)

In other words confession is explained as a party's informal admission (or, in criminal proceedings, the accuser's confession) is an out of court statement made by that party which is adverse to his case. Such admissions have long been recognized as an exception to the exclusionary hearsay rule and are thus admissible to prove the truth of the matters stated.<sup>29</sup> A confession or an informal admission is not conclusive evidence of any fact admitted; however, the party who made it may adduce other evidence at the trial to show why it should not be relied on.<sup>30</sup>

In the case of *Pakala Narayan Swami v. Emperor* (supra) Lord Atkins observed that;

*"A confession must either admit in terms the offence, or at any rate substantially all the facts which constitute the offence. An admission of a gravely incriminating fact, even a conclusively incriminating fact, is not in itself a confession, for example an admission that the accused is owner of and was in recent possession of the knife or revolver which caused death with no explanation of any other man's possession".*

Also in the case of *Mathei Fidoline Haule vs. R*,<sup>31</sup> the court of Appeal of Tanzania stated that;

*"A confession within the context of criminal law is one which admits in terms the offence charged. It is one which admits all the essential elements or ingredients of the offence. An admission of one or only some of the ingredients of the offence is not sufficient".*

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<sup>29</sup> E.Raymond, "Selected Judgments and Writings of Justice James Mwalusanya and Commentaries", Justice and Rule of Law in Tanzania (2004), *Evidence*, (2<sup>nd</sup> E.d).2004P.206

<sup>30</sup> *Ibid* at p.206

<sup>31</sup> *Mathei Fidoline Haule vs. R* [1992] TLR 148



### 2.2.2 Background of the confession

In Tanzania we have Evidence Law cited *The Evidence Act* [CAP 6 R.E 2002]. The other Evidence Act In the rest of East African Countries, such as Uganda Evidence Laws and Kenya Evidence Laws are closely basing on the Indian Evidence Act 1872 which was normally used in most countries in East Africa.

There have been little amendments of *Tanzania Evidence Act* (supra) since its application.

Uganda amended *Uganda Evidence ordinance* in 1935,<sup>32</sup> “according to majority recommendation and confession were made inadmissible when made to a police officer below rank of an assistant inspector,<sup>33</sup> in Kenya it was after the outbreak of MAUMAU war that the territory amended the Indian Evidence Act in its application in Kenya,<sup>34</sup> to make confession admissible if made to police officer of or above the rank of assistant inspector and confession while in police custody admissible not only if made to a magistrate but also if made to police officer of the above ranks, but the law in Tanzania did not change.<sup>35</sup> Until in 1980, the position of the law governing confession was changed up to date is that, the confession made to a police officer is admissible, for the purpose of the law of Evidence in Tanzania under Section 3(1) of the *Tanzania Evidence Act*,<sup>36</sup> police officer has been defined to mean any member of the police force of or above the rank of corporal. The condition for the admissibility of that confession is that; the statement must be a confession as defined under section 3(1) (a) – (d) of the *Tanzania Evidence Act*,<sup>37</sup> It must be made to a police officer, it must be made by an accused person, it must be voluntary one and the onus of

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<sup>32</sup> *Uganda Evidence ordinance* in 1935

<sup>33</sup> <https://www.lawteacher.co> (accessed on 21<sup>st</sup> February 2021)

<sup>34</sup> Indian Evidence Act

<sup>35</sup> Re Tanganyika evidence bill, 1936

<sup>36</sup> the *Tanzania Evidence Act*,

<sup>37</sup> *Ibid*

proving that a confession was voluntary made lies on the prosecution side, it is shown under section 27 (2) of the *Tanzania Evidence Act*.<sup>38</sup>

The police force has been entrusted by the law to conduct investigation of the crime. The procedural law described all requirements which have to be followed by police so as to ensure justice to individuals. Thus includes some reference such as per section 53 up to section 58 of *the Criminal Procedure Act*,<sup>39</sup> provides rights and treatments of the person under restraint Article 13 (6) (b) of *the Constitution of United Republic of Tanzania*,<sup>40</sup> which states that “no person shall be held liable until he is proved guilty.” Justice gives to as been described as the virtue by which it gives to every man what is his dues as opposed to injury or wrong. Hence when connecting justice with legal matter it usually means justice according to law and this entails fairness, equality and treatment according to law. Also under Article 13 (6) (e) of *the Constitution of United Republic of Tanzania*,<sup>41</sup> provides that “no person shall be subjected to torture or inhuman or degrading punishment or treatment.”

At **common law**, an informal admission made by an accused person prior to his trial, to a person in authority was known as a confession, an expression which included not only a full admission of guilt but also any incriminating statement.<sup>42</sup> A confession occupies the highest place of authenticity when it comes to proving guilt beyond reasonable doubt.<sup>43</sup> Confessions, if voluntary, are deemed to be relevant facts against the person who made them only.<sup>44</sup> A confession can only be in respect of a matter within the knowledge of the person confessing. A confession is worthless if it relates to matters outside of that knowledge or experience. He cannot confess to the acts of other persons which he has not seen and of which he can only

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<sup>38</sup>The *Tanzania Evidence Act*, Cap 6 R.E 2019]

<sup>39</sup> *The Criminal Procedure Act* [Cap 20 R.E 2019]

<sup>40</sup> *The Constitution of United Republic of Tanzania* [Cap 2 of 1977 as amended from time to time]

<sup>41</sup> *Ibid*

<sup>42</sup> Per Lord Reid in *Customs and Excise Commissioners v. Harz and Power* (1967) 1 AC 760 @ 817-818

<sup>43</sup> *Mustapha Mohammed vs. The State* (2007) 11 NWLR (Pt 1045) 303

<sup>44</sup> *Onyenye v. State* 2012 Vol. 5-7 Pt. II MJSC 121; *Adesina v. State* 2012 Vol. 6-7 Pt. II MJSC 80

have knowledge by hearsay. In the case of *Samuel Ayo Omoju vs. The Federal Republic of Nigeria*,<sup>45</sup> where the accused, a Pastor was arraigned and charged with exporting 1.1 kg of cocaine worth ten thousand US Dollars, the Supreme Court acknowledged the following statement of the accused person as a true confessional statement:

*I was in the Hotel until Sunday when Areh came with 118 wraps on something inside shinning leather which I swallowed all with water. Around 9.00 pm he came to the Hotel and brought me to the Airport and I checked in one luggage and I climbed upstairs for the final screening and went down... After the screening I was taken downstairs to their office. In the office, I was told that that I am being suspected and I will be under observation until I go to toilet to determine if I am carrying drugs. In their office, I went to toilet about 4.05 am and excreted forty-three (43) pieces of hard drug substance... All in all, the total of 118 pieces of hard drug cocaine were excreted by me. The drugs were given to me by Mr. Areh at Dreamland Hotel.*

Something to note is that there different between confession and admission in criminal cases, According to Black's Law Dictionary, the distinction between admissions in criminal cases and confessions by the accused is the distinction in effect between admissions of fact from which the guilt of the accused may be inferred by the jury and the express admission of guilt itself.<sup>46</sup> In some cases, silence may amount to an admission, especially when both parties are speaking or are simply on the same and even terms i.e. no one occupies a superior position in relation to the other. In determining the guilt of a suspect, such a person is entitled to refrain from answering a question put to him for the purpose of discovering whether he has committed the criminal offence or not. The suspect has no obligation to comment when he/she

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<sup>45</sup>ibid

<sup>46</sup>B. Garner, *Judicial Protection of Civil and Political Rights in Tanzania*, Dar-es-Salaam: The National Organisation for Legal Assistance (NOLA (8<sup>th</sup> E.d), 2010 p.254

is informed that someone else has accused him/her of an offence. However, where it is reasonable to expect someone to make some response to an allegation made against him, his subsequent silence can now be used as evidence against him. In some cases, a rejection, ipso facto, may not necessarily render the statement made in his presence inadmissible as he may deny the statement in such a manner and under such circumstances as may lead the Court to disbelieve him and constitute evidence from which an acknowledgment may be inferred by it.<sup>47</sup>

## **2.3 Cautioned Statement**

### **2.3.1 Meaning of Cautioned Statement**

Cautioned statements are simply means oral or written statements made after caution. The caution as usually administered by the police, is supposed to alert the maker of the statement to the potential use that may be made of the statement in a subsequent criminal proceedings. Confessions which are usually embodied in cautioned statement are after all declarations against one's own interest. For instance of the caution; *"Do you wish to say anything? you are not obliged to say anything but whatever you say will be taken down in writing and may be given in evidence"*. In the case of *Ibrahim vs. R*,<sup>48</sup> lord summer in the judgment of the Privy Council gave what could be regarded as the starting point to the question of the admissibility of cautioned statement.

*"It has long been established as a positive rule of English criminal law that no statement by an accused is admissible in evidence against him unless it is shown by the prosecution to have been a voluntary statement in the sense that it has not been obtained from him either by fear of prejudice or hope of advantage exercised or held out by a person in authority."*

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<sup>47</sup>T.Alan, *Principles of Evidence*, (2<sup>nd</sup> E.d),2000 P. 257

<sup>48</sup>*Ibrahim vs. R* (1914) A.C 599 at 609

The researcher has used the word confession interchangeably with cautioned statement because to some extent they mean the same.

#### **2.4 Purpose of Confession (cautioned statement)**

Voluntariness of a confession is a key element in the admissibility of a confession. Because under the current perspective, in the *Tanzania Evidence Act*, per section 27 (1) provides that, “A confession voluntarily made to police officer by a person accused of an offence may be proved as against such person”. So according to this section it admits the confession made to police officer when proved that such confession was voluntarily made. The confession which is taken has to be involuntary if it was induced by threat, promise or other prejudice held by the police or any other person in authority as shown under Section 27(3) of the *Tanzania Evidence Act* .

The onus of proving that the confession made by the accused person was voluntarily made by the accused is up on the prosecution as under section 27 (2) of the *Tanzania Evidence Act*,<sup>49</sup> A good example is in the case of *Ibrahim v. R*,<sup>50</sup> where Lord summer said that it has long been established that no statement by an accused is admissible against him unless it has been provided by the prosecution that it was voluntarily made.

From the explanation above it is very clear that the purpose of having a voluntary confession was to make sure that the accused freely confess his guiltiness of the offence accused with, for example in the case of *R v. Bampamiyki*,<sup>51</sup> it was stated that a statement should be regarded as a confession only when it contains ingredients of the crime with which the accused person is charged.

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<sup>49</sup> [Cap 6 R.E 2019]

<sup>50</sup> *Ibrahim v. R*, [1914] A.C 599

<sup>51</sup> *R v. Bampamiyki* [1957] E.A 473

## **2.5 Exception to the General Rule that of admissibility of only confession(cautioned statement) that was made voluntary.**

There are other circumstances in which not every inducement has the effect on confession involuntary and that confession accused by induced, threat or promise can be admissible unless such inducement was likely to cause untrue admission of guilt of a person, this is provided under section 29 read together with section 30 of *the Tanzania Evidence Act (supra)*, which states that confession made after the removal of impression caused by inducement, threat, or promise need not be rejected ,this was held in the case of *Josephat Somisha Maziku vs. R*,<sup>52</sup> when confession leading to the discovery of a new thing relates to the fact in issue is relevant as it was held in the

Also under section 33 of *the Tanzania Evidence Act (supra)*, provides that confession against co-accused when one of them confess by incriminating the other such confession will be admissible with certain caution, as it was supported in the case of *Asia Iddi vs. R*,<sup>53</sup> the court held that the evidence of a person who has an interest to serve needs corroborated.

## **2.6 Power of the police officer to take cautioned statement**

The power of police officer when investigating the offence is the interrogation of the suspect. When the police officer are looking for the circumstances, which led to the occurrence of the offence they need to interrogate people who are familiar with the case. Police officer are empowered to summon any relevant person within the local limits of then police station or any of adjoining station to appear them for the purpose of examination as to the facts and circumstances of the case, under section 10(2) of the CPA. However in this process of interrogation do process basic right to the interviewees do posses basic right which should

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<sup>52</sup> [1992] TLR 227

<sup>53</sup> [1989] TLR 174

them from unjust action by the police officer such rights includes inter alia the right to treatment with respect for human dignity, right to get information about the offence alleged in the language he/she understands and right to medical treatment in custody. To observe the said process police officer are required to conduct cautioned statement for the suspect person before interrogation, as stipulated under section 53(c) of CPA including importance of disclosing true information, namely, language in which he is fluent, in writing in accordance with the prescribed form, if practicable. Also it was shown in the case of *Ramadhan Salum vs. R*,<sup>54</sup> in this case the High Court of Tanzania at Mwanza setting clear that the cautioned statement which has been taken under section 53 and 57 of CPA which comprising with questions and answer may be well admissible before the court.

Furthermore, in obtaining confession the law requires the police to treat the accused person fairly. It is clear provided under section 10 of CPA that police required informing the accused person that he is bound to answer truly all questions relating to the offence committed. Also the law requires the confession obtained must be free from any kind of threat, prejudice held out of police officer. Thus free and voluntary confession deserves the highest credit because it is presumed to flow from the strongest sense of guilt and therefore it is admitted as proof of the crime which is guilty of that offence.<sup>55</sup> Problem arises in practice, the way police officers are going contrary in extracting of confession. It has proved in most cases police have been violating the requirement of the law for confession to be voluntary such as confession has been obtained out of threat or torture. As witnessed by *Rahma Gallus* (34 yrs) the second accused of the case concerning NBC money robbery done at Ubungo Dar es salaam, headed in swahili language **“Polisi alinipiga mimba ikaporoka”** whereby she confessing before the court that she was beaten by police in the process of interrogation by way of torturing since

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<sup>54</sup> *Ramadhan Salum vs. R* Appeal case No. 5 of 2007 in the High court of Tanzania at Mwanza, (Unreported)

<sup>55</sup> Article 13(5) (b) of CURT [Cap 2 of 1977 as amended from time to time]

pregnant breakages which caused abortion of her pregnant at Temeke Hospital. At that event it was alleged that 168.5 million was stolen by bandits.<sup>56</sup>

Generally in this Chapter covered the background and purpose as well as the various concept of the cautioned statement in Tanzania. It is argued in this chapter that the voluntariness of the confession is very important right because it is only way that obtaining a true confession that based on the procedural law and improve the right of the accused or suspect person as well as it is only way that will render effectively struggle against oppression, torture, cruel or inhuman done by the police forces.

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<sup>56</sup> Quoted on NIPASHE ,News magazine No. 05438,of wednesday,14 October 2009 at Pg 5



## **CHAPTER THREE**

### **THE LEGAL AND INSTITUTIONAL FRAMEWORK OF CAUTIONED STATEMENTS IN TANZANIA**

#### **3.0 Introduction**

The researcher in this chapter, therefore, is intended to examine the legal framework that protect the right of accused or suspect person under both international, regional, Sub-regional and local level.

#### **3.1 The international legal framework that cautioned statement to be admissible**

The right to ensure equality before the law is not just a national concern but it is protected by both national and international legal instruments. This right is given more credence by the international human rights law.<sup>57</sup> The right to ensure equality before the law is a human right aspect and it includes many rights, the right to fair treatment, no person shall be subjected to torture or inhuman and no person charged with a criminal offence shall be treated as guilty of the offence until proved guilty of that offence. There are various international instruments that protect the right to fair treatment in taking cautioned statement at international level.

##### **3.1.1 Ratification of International Law in Tanzania**

International law is a part of our law, and must be asserted and administered by the court of justice of appropriate jurisdiction, as often as questions of right depending upon it are duly presented for their determination.

Tanzania follows the dualist tradition. Therefore the position is that, international law, and the municipal law of Tanzania is two different systems. Being adherent of the dualism system, any rule of international law, must be transformed into the municipal law to be enforceable by

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<sup>57</sup>J.C.Mashamba, , *Judicial Protection of Civil and Political Rights in Tanzania*, 2010 p 116

the courts of law in Tanzania. The process is such that, it is the executive that signs the treaty under Article 63 (3) (e) of the CURT (supra). However after signed some should be tabled in parliament for ratification. Once satisfied, the same is then tabled as a bill, and on Act of parliament will be enacted to that effect. In the Tanzania legal system, the hierarchy of laws goes thus; Constitution, Principal legislation and international law. The hierarchy is so because international law will be incorporated into municipal law.<sup>58</sup>

### **3.1.2 The Universal Declaration of Human Rights, 1948**

The Universal Declaration of Human Rights, 1948 was adopted by the United Nations General Assembly on 10<sup>th</sup> December 1948. The influences of the UDHR have been proved on the existence of many international, regional and national human rights standards.<sup>59</sup>

*The UDHR provides under Article 5 that “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment”. The provision is very clear and straight forward in its terms, it provides for the right to fair treatment. The acts which are not treated fair with inhuman or tortured or those that are intended to cause violation of human rights are not protected under this provision. As well as under Article 10 provides that “Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him”. On the above provisions the right to fair treatment is a basic human right so that is the one of the universally applicable principles recognized in the UDHR adopted by the world’s government in 1948 and still the cornerstone of the international human rights system.*

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<sup>58</sup> N.S.Malcolm, *International law*, (6<sup>th</sup> E.d).2008 P.25

<sup>59</sup> *ibid*

### **3.1.3 International Covenant on Civil and Political Rights (ICCPR),<sup>60</sup>**

The right to fair treatment is a norm of international human rights law designed to protect individuals from the unlawful and arbitrary curtailment or deprivation of other basic rights and freedoms, the most prominent of which are the right to life and liberty of the person. It is guaranteed under Article 14 (2) and (3) (g) of the covenant which provides that *“Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law”*. Also in sub Article (3) (g) stated that *“Not to be compelled to testify against himself or to confess guilt”* so that the above provision guaranteed fair treatment of the suspect or accused person when charged criminal offence either in a police custody or not until it prove that person is guilty according to the law. It means that the accused person or suspected person charged with criminal offence and forced to confess his guilt, that confession statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings.

### **3.1.4 Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment,<sup>61</sup>**

The United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture) was adopted in 1984 and entered into force in 1987. According to Article 15 of the Convention, stated that *“Each state party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made”*. So that any statements gathered as a result of torture must be deemed inadmissible in legal proceedings. This provision is extremely important

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<sup>60</sup> *International Covenant on Civil and Political Rights*, UN General Assembly resolution 2200A (XXI), December 16, 1966, entered into force March 23, 1976 [hereinafter ICCPR]

<sup>61</sup> UN adopted 10<sup>th</sup> December 1984, came into force in 1987

because, by making such statements inadmissible in court proceedings, one of the primary aims of torture becomes redundant.<sup>62</sup> This convention is silence on what are the procedures for evaluating the admissibility of the statements made by the accused during the pre trial or trial.

Also under Article 10 of the convention stated that, *“Each state party shall ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment”*. This provision is more important in this study because it creates awareness to the law enforcers about the prohibition of torture in various levels in order to protect human rights.

### **3.1.5 Rome Statute on International Criminal Court**

This is a piece of legislation that acts as a foundation of fair treatment in ICC. The Rome Statute enshrines the right to a fair treatment in, among other provisions, Article 55 (1) (b) this provision requires the trial chamber to ensure during *“the investigation under this statute, a person; shall not be subjected to any form of coercion, duress, or threat, to torture or to any other form of cruel, inhuman or degrading treatment or punishment”*. Also in supported with Article 64 (2) as well as trial chamber to *“ensure that a trial is fair and expeditious and is conducted with full respect for the rights of the accused and due regard for the protection of victims and witnesses”*

Rome statute works together with the so called *Code of Conduct* for the prosecutors. The basic rules contained in the code of conduct were summarized in the strategic plan 2012-15 of the office of the prosecutor and this summary includes, among others, the following guiding

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<sup>62</sup> <https://www.worldreport.com> Accessed 22 march 2021

principles for prosecution staff: respect and regard for, and adherence to, the Rome statute and Rules of Procedure and Evidence (RPE); conduct that befits the status of international civil servants and displays the highest standards of integrity, independence, impartiality, professionalism and confidentiality. Respect for human rights and fundamental freedoms, the principle of equality before the law, the presumption of innocence and the right to a fair trial.<sup>63</sup>

The Rome Statute (ICC Statute) under Article 64, 66 and 67 provides about right to fair trial in international law. But under Article 67, the among other rights the following are rights related to the research under this study such as accused not to be compelled to testify or confess guilt and to remain silent without such silence being a consideration in the determination of guilt or innocence; to make an unsworn statement in his or her defence: However despite of all these provisions, Rome statute is silence on how the fairness of the trial can be attained where accused person repudiated or retracted the cautioned statement.

### **3.2 Regional Instrument**

#### **3.2.1 African Charter on Human and Peoples' Rights, (1981)**

This Charter was adopted by the Heads of States and Government of the Organization of African Union in the summit meeting in Nairobi, Kenya in July, 1981 and it came into operation on 21/10/1986. Tanzania ratified this Charter on 31/5/1982.<sup>64</sup>

This Charter provides categorically under Article 5 that, *“Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man particularly slavery, slave trade,*

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<sup>63</sup> K. J. Stewart, *on Fair Trial Rights under the Rome Statute* (November 2014) p.2

<sup>64</sup> J.C.Mashamba, , *Judicial Protection of Civil and Political Rights in Tanzania*, 2010 p 116

*torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.*”<sup>65</sup> That it is necessary to formulate and lay down principles and rules to further strengthen and supplement the provision relating to fair treatment in the charter and to reflect international standards; The African Commission on Human and Peoples’ Rights in the case of *Media Rights Agenda and Others vs. Nigeria*,<sup>66</sup> emphasized on the need of the Governments which are States Parties to the African Charter on Human and Peoples’ Rights to avoid restricting the rights and to have special care with regards to those rights protected by constitutional or international human rights law.

### **3.3 Domestic legal framework**

#### **3.3.1 The Constitution of the United Republic of Tanzania.<sup>67</sup>**

The Constitution of the United Republic of Tanzania was enacted in 1977, since then, this Constitution has undergone several amendments.

This is the fundamental law from which all other laws derive their legitimacy from it. The constitution of Tanzania like those of other countries it provides for the rights and responsibility of individuals. The constitution of United Republic of Tanzania is mother law of all laws; under Article 64 (5) of the Constitution,<sup>68</sup> gives the power of constitution to prevail when there is a conflict of another law.

Under Article 13 (6) (b) provides that “*no person charged with a criminal offence shall be treated as guilty of the offence until proved guilty of that offence*”. And also Article 13 (6) (e) provides that “*no person shall be subjected to torture or inhuman or degrading punishment or treatment.*” So that for the cautioned statement to be relevancy and admissible in the court of

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<sup>65</sup> *African Charter on Human and Peoples’ Rights* ( Ratification and Enforcement) Act (Chapter A9) (No of 1983)

<sup>66</sup> *Media Rights Agenda and Others vs. Nigeria* (2000) AHRLR 200

<sup>67</sup> [Cap 2 of 1977 as amended from time to time]

<sup>68</sup> CURT

law must not be involuntary which means made under force or inhuman, so that there should be rules and guidelines that regulate all procedures in criminal proceedings including the procedure for admissibility of the cautioned statement.

### **3.3.2 The Criminal Procedure Act,<sup>69</sup>**

This is the principal law that regulates affairs on how rights and liability of the accused can be obtained in the court of law in the land. According to section 10(3), section 57 which read together with section 58 of *the Criminal Procedure Act*,<sup>70</sup> proves for admissibility of confession made by an accused person to the police officer that is when a police officer makes an investigation, or interview to person, must record the statement in full language used unless it in all circumstances impracticable to do so and emphasis to made a cautioned statement to a person before he made the confession.

Apart from providing procedures, this piece of legislation also provides some rights of the accused person. One of the rights is right to remain silence not only in the court of law but also in the custody of the police. The Act also protects the accused from making incriminating statements. It also provides for the conditions to observe when accused person choose to make statement in the custody. Surprisingly, apart from being principal procedural law of the land, the laws in our land is silence on what if police officer going against the procedures provided under Criminal Procedure Act when taking cautioned statement.

### **3.3.3 The Tanzania Evidence Act,<sup>71</sup>**

This Act was enacted in 1967 by repealing *the Indian Evidence Act* of 1872 which had been in force since 1920. So far, it is the main legislation which regulates the admissibility of

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<sup>69</sup> The Criminal Procedure Act [Cap. 20 R.E 2019]

<sup>70</sup> *Ibid*

<sup>71</sup> [Cap 6 R.E 2019]

evidence in judicial proceedings in Tanzania. In *Evidence Act* provides for the conditions for the admissibility of confessional statement. These conditions necessary for acceptance and admissibility of confession is that it should be freely and voluntarily given. This provided under section 27 (1) of *the Evidence Act* (supra). This position provides for the same admissibility of confession of cautioned statement that is a confession voluntarily made to a police by a person accused of an offence may be proved against that person, police officer must be of or above the rank of corporal, as prescribed by the law otherwise the evidence will be inadmissible, this is supported in the case of *Gervas Kilongozi v. R*,<sup>72</sup> in this case it was held that the confession was inadmissible in evidence and that case was not proven beyond reasonable doubt due to the failure to show the rank of a police officer. Also supported by Lord Summer in the case of *Ibrahim v. R*,<sup>73</sup> in which he stated inter alia that;

*“No statement by an accused is admissible in evidence against him unless it is shown by prosecution to have been a voluntary statement, in the sense that it has not been obtained from him either by fear of prejudice or hope of advantage exercised or held out by a person in authority”*

Also another condition for the admissibility is onus of proving the voluntariness of confession that lies upon the prosecution. The provision of section 27 (2) of the Act (supra) provides the onus of proving that any confession made by an accused person was voluntarily made by him shall lie on the prosecution. This is supported by the case of *Njuguna Kimani & others vs. R*,<sup>74</sup> it was held that;

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<sup>72</sup> *Gervas Kilongozi v. R* [1994] TLR 39

<sup>73</sup> *Ibrahim v. R* [1914] AC 599

<sup>74</sup> *Njuguna Kimani & others vs. R*,<sup>74</sup> [1954] 21 EACA 316



*“Onus is on the prosecution to show voluntaries of confession and that if third degree measures were applied they had ceased to operate in the mind of the accused at the time he was making the confession”*

Though Evidence Act provides the conditions for the admissibility of confessional statement, it has nothing to do with the procedure relating with trial within a trial if the accused repudiated or retracted his or her statement.

### **3.4 Institutional Framework**

In Tanzania the institutions that are responsible for regulating the confession of cautioned statement are; the Tanzania Police Force and the judiciary which has power to hear fresh cases or appeals from any party aggrieved by the decision of the lower court.

#### **3.4.1 The Tanzania Police Force**

The Tanzania Police Force is established and constituted in accordance with *the Police Force and Auxiliary Service Act* and the head of the Police Force is the Inspector General of Police by virtue of the ranks provided under section 4 of the Act.<sup>75</sup> The Inspector General of Police is appointed by the President of the united republic of Tanzania as provided under Article 148(2) (a) of *the Constitution of the United Republic of Tanzania*.<sup>76</sup> The Tanzania Police Force is the organ responsible for maintenance of peace and order in the country.<sup>77</sup>

Who is a police officer is defined under section 3(1) to mean a member of the police force of or above the rank of corporal. Prior to 1980, confessions made to police officer were not admissible. This is because the Evidence Act found its way into Tanzania from India (India

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<sup>75</sup> *the Police Force and Auxiliary Service Act* [Cap 322 R.E 2019]

<sup>76</sup> [Cap 2 of 1977 as amended from time to time]

<sup>77</sup> The police force and Auxiliary Service Act ,Section 5(1), [Cap 322 RE 2002]

Evidence Act). In the case of *Bampamyki s/o Buhile v. R*,<sup>78</sup> the reason was that the powers of police are often abused for the purpose of exhorting confession by oppression. It is very often that the police will use tortuous means to obtain confession. That is why confession made to police officer before 1980 was inadmissible while those made to private person was admissible.<sup>79</sup> However in 1980 section 27 of the Evidence Act was amended to make admissible confessions made to police officer. Thus for the confession made to police officer to be admissible it must be made before a police officer of or above the rank of corporal.

### 3.4.2 Judiciary

The judiciary is that branch of the state which adjudicates upon conflicts between state institutions, between state and individual, and between individuals. The judiciary is independent of both parliament and the executive. It is the feature of judicial independence which is of prime importance both in relation to government according to law and in the protection of liberty of the citizen against the executive.<sup>80</sup>

Under Article 108 of the constitution establishes the High court of Tanzania with jurisdiction within the mainland of Tanzania. Also under Article 118 court of Appeal of Tanzania is established with the power of entertaining all criminal appeals in Tanzania. Also under the Magistrates' Court Act establishes subordinate courts such as primary court, district court and resident magistrates' court. All courts have a power to prove that confession of cautioned statement made to a police officer by accused is voluntarily one. This observed from various decided cases from various courts for instance in the recent case of *Twaha Ali & 5 others vs. R*,<sup>81</sup> specifically the court stated that;

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<sup>78</sup>*Bampamyki s/o Buhile v. R* [1957] E.A 473

<sup>79</sup> Mshana, *Evidence*, DSM: Tanzania Police Academy, 2006

<sup>80</sup> H.Barnet, *Constitutional and Administrative Law*, (4<sup>th</sup> E.d).2002. P. 108

<sup>81</sup>*Twaha Ali & 5 others vs. R*,<sup>81</sup> Criminal Appeal No. 78 of 2004 CAT (unreported)

*“.....if that objection is made after the trial court has informed the accused of his right to say something in connection with the alleged confession, the trial court must stop everything and proceed to conduct an inquiry (or a trial within a trial) into the voluntariness or not of the alleged confession. Such an inquiry should be conducted before the confession is admitted in evidence....., omission to inform the accused of this right and/or to conduct an inquiry or a trial within a trial in case there is an objection raised, results in a fundamental and incurable irregularity. This is because, if the objected confession is the only crucial and/or corroborative evidence, an accused would be convicted on evidence whose source is not free of doubt or suspicion”.*

**Generally in** this Chapter covers the legal and institutional framework on the relevancy and admissibility of cautioned statement in Tanzania. Under this chapter different legal instruments and institutions were examined to see how they guarantee protection on the right to fair treatment of the accused or suspect person. The instruments covered are international instruments, regional instruments, and domestic instruments. The study also examined the role of the Tanzania judiciary in protection of the right of accused person in the police custody.

## **CHAPTER FOUR**

### **RESEARCH FINDINGS AND DATA ANALYSIS**

#### **4.0 Introduction**

The research in this Chapter gives a summary of the research findings collected from the field study and from documentary review. The objective of this research is to know the extent of the powers of the Tanzania Police Force in taking cautioned statement to be admissible. The method of data collection employed were interview and questionnaires for primary data and documentary review for secondary data.

#### **4.1 Data presentation**

The study focused on the extent of the powers of the Police Force in taking confession of cautioned statement to be admissible in Tanzania. During the collection of data two kinds of data were used which are primary data and secondary data. Primary data include those data from the field area, these are the data obtained directly from the respondents. Secondary data involved collection of data from library through various books, papers and through internet. In the field different respondent were consulted which were Police Officers, magistrates, advocates, human rights activists, open prisoners and ordinary citizens. The total number of respondents is 15.

#### **4.2 Data Analysis and Discussion.**

##### **4.2.1 Whether the law empowered by police in criminal investigation observes the requirements and rights of accused persons as provided by the law.**

The right to fair treatment in a police custody and during taking cautioned statement is among the fundamental right provided under Article 13 (6) (b) and (e) of the CURT (supra). There

are various principal legislations which provide for the procedures to be used by police force during taking cautioned statement, for instance section 57 of the CPA (supra) and section 27 of the TEA (supra). The police officer in charge who taking cautioned statement is intended to obtain cautioned statement without inducement, threat, promise or cruel of the accused, this according to the general rule of taking confessions.

The response of the respondents as to whether police force taking cautioned statement observes the requirements and rights of accused persons as provided by the law; 90% of advocates argued that the police force don't observe the rights of accused person as provided by the law, the same view was held by 80% magistrates, 90% for human rights activists and open prisoners. But 85.7% of the police officers argued that the power conferred by the law is reasonable for obtaining cautioned statements. 70% of the ordinary citizens did not respond to this question because of the little knowledge they have about the rights of accused person in police custody and powers of the police force when taking cautioned statements.

#### **4.2.2. Lack of cooperation between police and the community or accused person**

Most of the accused person while in custody used to offer a little cooperation in the process of ensuring that the justice is manifestly seen to be done. This forces the police officers who prosecute the accused to involve the use of extra power to force the accused to incriminate him.

One of the police officers while responding to my interviews shared with me the following in part;<sup>82</sup>

*“Most of the accused persons are notorious that they refuse to give positive participation. This forces us to use extra force to seduce them to confess.*

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<sup>82</sup> Information extracted from Police officer through an interview at mafinga Police station in Mufindi district in Iringa concerning the way of obtaining of cautioned statement in the police custody.

*Sometimes we use to promise, threat and sometimes oppression when necessary. He goes further to present that sometimes order come from higher officers to inflict pain to the accused even when not necessary”.*

This presentation backed up by the poor system of government inherited from the colonizers that involve the use of people with low level of education concerning investigation. Naturally it is the duty of the prosecution side to prove their allegation, with high observation of the accused right that safeguarded by the court which is there to fairly assess the innocence of the accused.

In the side of the relationship between the police and the public being somewhat strained, the people are ordinarily scared of the police and would like rather scrupulously like to avoid any contact with them. The witnessed have real and imaginary fears, regarding the possible inflection of violence on them by the police. These altitude resulting police officers to use more unreasonable force for suspect including torturing, this is illegal way in obtaining information from the arrested person. As witnessed by the case of *Josephat Somesha Maziku*,<sup>83</sup> whereby the accused person complained that his confession not being taken voluntarily rather than threat and inducement contrary to law concerning.

#### **4.3 Research Findings**

The researcher through the data collected from both the field directly from the respondent and the data collected from other sources like books, papers and internet has come to the following findings;

A researcher after taking into consideration of the law governing cautioned statement that confession should be made to the person in authority, it must be voluntarily made, it must be

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<sup>83</sup> Josephat soeka Maziku [1992] TLR 227

made by an accused person and the statement must be a confession defined under section 3(i) (a) –(d) of the *TEA*<sup>84</sup>

And after deeply consideration of the exceptions to the circumstances where a confession can be taken involuntarily and taken as evidence as against the accused person as it is under section 29, and section 32 of the *TEA*<sup>85</sup> A researcher have found that the notion of confession as it is supposed to be as general rule said, have been washed away by those provisions which allow even involuntarily confession to be taken as evidence against the accused person.

Also a researcher found that if adequate measures could have been imposed as against the application of section 29 and section 32 of the *TEA*, then the jeopardization of the rights of the accused person at the time of being interrogated by the person in authority from the purpose of obtaining cautioned statement should have been minimized to a great extent and the status of confession could have been maintained.<sup>86</sup>

Not only that but also a researcher found that if adequate measures and sanctions could have been imposed as against those person in authority pertaining the way they obtain confession from the accused person, then they could have used those exceptions to general rule in confession in proper way without taking them as a chance for violating rules governing taking a cautioned statement from the accused person as they are doing now by using the umbrella of section 29 and section 32 of the *TEA*, as they a law even involuntarily confessions to be admissible in certain circumstances.<sup>87</sup>

So the provisions of section 29 and section 32,<sup>88</sup> if will still be used without any measures and if there will be no sanctions to be imposed to persons in authority who unreasonably used

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<sup>84</sup> The Tanzania Evidence Act

<sup>85</sup> *ibid*

<sup>86</sup> *ibid*

<sup>87</sup> *ibid*

<sup>88</sup> *ibid*

those provisions as an umbrella of brutality then confessions will be losing its status and retracted and repudiated confessions will continue to be an issue in the court of law.

**Generally in this** research revealed that the powers of the police force in obtaining cautioned statement is unreasonable because violate human rights and the limitation of those power is not clear in the law because there are no laid down ground or limitation under which the police officer in obtaining cautioned statement cannot violate human rights, rather than the law gives power the police officer a room to violate human rights by its exception to the general rule of taking confessions. This loophole has been frequently used by the police officers to violate human rights.



## **CHAPTER FIVE**

### **CONCLUSION AND RECOMMENDATIONS**

#### **5.0 Introduction**

This chapter deals with the conclusion of the research and the recommendation of the researcher in relation to the law and practice in protecting rights violated during cautioned statements in Tanzania and what should be done to the police officers and the legislature.

#### **5.1 General**

The researcher has researched on the relevancy and admissibility of cautioned statement. The researcher examined different domestic, regional and international legal framework that regulate admissibility of the cautioned statement. The researcher has observed that there are some problems in the domestic law as they give much power to the police officer in charge to obtain cautioned statement from the accused person.

The research has shown with a number of vivid examples from various cases where the police officers violating human rights when obtaining cautioned statement. The police force instead of being a protective agency to the human rights.

The study revealed that the majority of citizens are not aware of the law governing cautioned statements, the study has also revealed that even the Police Officers who are responsible for regulating cautioned statements some of them are not aware of the existence of the international, regional and sub-regional instruments which provides for the right to fair treatment. This lack of awareness is also one among the factors that leads to violating human rights because the extent of the police powers in regulating cautioned statements is not a national concern only but it is a global concern and the right of the accused person is

governed by local and international instruments which must be in the fingertips of all the Police Officers.

The research has also revealed that the favour granted by the law governing confession to the Police Officers to violate the general rule of confessions cannot end unless there are some changes on the law because the police officers used that exception to the general rule to violate the human rights and the rights of the accused.

## **5.2 Conclusion**

The right to each individual in Tanzania is guaranteed by the Constitution of the United Republic of Tanzania as amended from time to time, and the Act of the parliament derived its source from the CURT and also the provision of the Act is going contrary to the provision of the CURT that provision of the Act shall be nullified as unconstitutional. So the principles legislation should be amended to follow the ambit of the CURT such as the exception to the general rule of the confessions that provided in the TEA and the law should stipulate some sanction to those people in authority who willfully violate the rules governing confession by the umbrella of section 29, section 32 as they give a room for involuntary confession to be admissible as evidence in as against the accused person as well to make sure that the general rule to confession are not being in jeopardy by those exceptions. So that the right of the accused persons to be maintained.

## **5.3 Recommendations**

The Police Force should first know that it is a right of the accused person to be treated fairly and it is not a privilege which can be taken away by the personal whims of the police officer in obtaining cautioned statement. This right is guaranteed by domestic, regional and international instrument.

### **5.3.1 To the Police Force**

The Police Force should understand the powers conferred to it by the law on dealing with cautioned statement and should avoid the abuse of human rights from the ambit of an exception to the general rule. The police force should not violate human rights for the reason of the power given by the law to obtain cautioned statement and in fact does lead to the clashes between the police force and the citizens.

The police force should demonstrate protection of the human rights and act impartial at all times and should use reasonable force when obtaining cautioned statement than using force, torturing people, they must comply with the procedures prescribed under the law. The Police Force should not be biased instead all people are equal before the law should be treated equally, the police should avoid violating accused rights.

### **5.3.2 To the Lawmakers (Legislature)**

The researcher recommend to the legislature that the law giving power the police force for obtaining cautioned statement from the accused persons should be amended by providing clear and specific grounds or reasons under which the police officer in charge may use force for taking cautioned statement. The legislature may also amend the law by removing that an exception to the general rule of taking confessions.

The researcher recommend that the government should rethink on this provision because it hinders the rights of the accused persons, a researcher after analyzing the law governing confession in TEA and after making some interviews to lawyers and non- lawyers pertaining the laws and how people in authority practices those laws a researcher have recommended as shown above.

## BIBLIOGRAPHY

### BOOKS

Alberty J. Reiss, Jr., *Police Brutality Crime and Justice, The criminal in the Arms Law*, (2<sup>nd</sup> E.d). New York: Oxford University Press, 1993.

Benedict, M., *Personal Freedom and Police Power in Tanzania*, Dar es Salaam 2001

Bryan A.G., *Black's Law Dictionary*, (8<sup>th</sup> Ed), USA: West Publishing Co 2004.

Chipeta, B.D., *Public Prosecution and the Law of Criminal Procedure: A Hand Book for Public Prosecutors*, Dar es Salaam: East African Educational Publications Ltd, 2004.

Garner, B.A., *Black's Law Dictionary*. (8<sup>th</sup> E.d). United States of America: West Publishing Co, 2004

Helen K.B and Peter C.M., *Justice and Rules of law in Tanzania*. Selected Judgments and writings of Justice, Dar es Salaam, 2005.

Ian, D., *Miscarriage of Justice and the Law of confession* "Evidential issues and Solution", London: Public Law Summer Edition 1993.

Kaena, A., *Modern law of Evidence* (6<sup>th</sup> Ed) New York: Oxford University Press, 2006

Kijibisimba, H and Peter, C. M., "Selected Judgments and Writings of Justice James Mwalusanya and Commentaries", *Justice and Rule of Law in Tanzania* 2005.

Krishnaswami, O.R., *Methodology of Research in Social Sciences*, Mumbai- India: Himalaya Publishing House Pvt. Ltd 2013

Maina, C. P., *Human Rights in Tanzania: Selected Cases and Materials*, Köln: Koppe Rudiger 2014

Maina, C.P and I, H., *Fundamental Rights and Freedoms in Tanzania*. Dar-es-Salaam: Mkuki na Nyota Publishers, 1998

Mapunda, B.T., "Personal Freedoms and Police Powers in Tanzania." *Fundamental Rights and Freedoms in Tanzania*. Dar es Salaam: Mkuki na Nyota Publishers, 1998.

## ARTICLES AND JOURNALS

Tibisana, L.M., “Effective Administration of the Police and Prosecution in Criminal justice”  
*the practice and experience of the United Republic of Tanzania*.2002, p.63

HIGH COMMISSIONER FOR HUMAN RIGHTS, (1997) *Human Rights and Law Enforcement: A Manual on Human Rights Training for the Police*, Professional Training Series No.5, Geneva:Centre for Human Rights, United Nations

International. *Amnesty International Annual Report: Tanzania* 2013, Washington DC.2013

## WEBSITES

<https://apt.ch/en/convention-against-torture>

<https://www.legalmatch.com/law-library/voluntary-confessions>.

<https://www.kpsrl.org/blog/right>

[https://www.policeforce.Go.tz](https://www.policeforce.go.tz).

[www.hkreform.gov.hk/en/docs/radmissibility](http://www.hkreform.gov.hk/en/docs/radmissibility)

## **APPENDICES**

### **APPENDIX I: QUESTIONNAIRE**

#### **QUESTIONNAIRE ON THE LAW AND PRACTICE IN PROTECTING RIGHTS VIOLATED DURING CAUTIONED STATEMENTS IN TANZANIA**

##### **Introduction**

**A.** My name is Ansleth R.Mteweale, a fourth year student at Ruaha Catholic University at Iringa, pursuing Bachelor of Laws. As part of studies in the fourth year I am supposed to conduct a research, my research is based on the law and practice in protecting rights violated during cautioned statements in Tanzania. The research is intended to examine the powers of the police force in obtaining cautioned statements and effectiveness of the law in regulating cautioned statement in Tanzania.

This questionnaire will be used for academic purpose only at it focus on examining the knowledge of different members of the societies understand the powers of the police force in obtaining cautioned statements and effectiveness of the law in regulating cautioned statement in Tanzania.

**B.** Please fill in the questionnaire in the prescribed places, you may skip to answer any question which you think is offensive. If it so pleases you may also add any comments that maybe helpful to me in one way or another. I really appreciate your maximum cooperation.

You are guaranteed with the right to anonymity

##### **C. PERSONAL PARTICULARS**

Name.....

Physical Address.....

Phone No. ....

Occupation.....

#### D. QUESTIONS

1. What do you understand about the rights of accused person during cautioned statements in Tanzania?

.....

.....

.....

2. Do police forces are abiding with the requirement of the law in obtaining cautioned statement or is just discretion? (Mark the appropriate box)

(a) It is abiding [ ☐ ]

(b) It is discretion [ ☐ ]

(c) I don't know [ ☐ ]

3. According to your understanding is there necessary to have an exception to the general rule of the confession statement?

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.....

.....

4. What are the powers of the police force in obtaining cautioned statement?

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.....

5. Does the procedures are followed by the police force when obtaining cautioned statement?

a) Yes [    ]

b) No [    ]

6. Can the police force held criminally liable when violating rights of the accused person in police custody? If your answer is 'NO' explain briefly, if your answer is 'YES' state on what grounds.

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.....  
.....  
.....

7. According to your understanding what are the challenges that lead to the violation of the law governing cautioned?

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.....  
.....  
.....

***THANKS FOR YOUR COOPERATION***