

**RUAHA CATHOLIC UNIVERSITY**



**RUCU**

**FACULTY OF LAW**

**ASSESSMENT ON DELAY IN DISPOSAL OF MURDER CASES IN TANZANIA A**

**CASE STUDY OF IRINGA REGION**

**A Research Submitted in Partial Fulfilment of Requirements for the Award of the**

**Bachelors of Laws Degree (LLB) Of Ruaha Catholic University**

**By**

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**RU/LLB/2020/302**

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**2024**

**CERTIFICATION**

I, the undersigned certify that, I have read this work and hereby recommend for acceptance by the Ruaha catholic University, a Research Report titled **“ASSESSMENT ON DELAY IN DISPOSAL OF MURDER CASES IN TANZANIA A CASE STUDY OF IRINGA REGION”** in partial fulfillment of the requirements for an award of the degree of bachelor of laws at Ruaha Catholic University.

Signature

.....

**DR. SAID MSUYA,**

Supervisor

Date ..... day of.....2024

## DECLARATION

I, **LETICIA A. BALAMA**, do hereby declare that this Research Report is my own original work and it has not been submitted for a similar or any other degree in any other university prior to this date of submission at Ruaha Catholic University. Signature

.....

**LETICIA. A. BALAMA**

Date ..... day of.....2024

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LETICIA A BALAMA

RUAHA CATHOLIC UNIVERSITY

2024

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Ultimately, I acknowledge the contributions of all other persons who have contributed in one way or another to make this study successful.

## DEDICATION

This work is dedicated to my parents, Mr. and Mrs. BALAMA.

## **LIST OF INSTRUMENTS**

### **CONSTITUTION**

Constitution of United Republic of Tanzania of 1977 amended time to time

### **PRINCIPAL LEGISLATION**

Criminal Procedure Act Cap 20 R.E 2022

Penal Code Cap 16 of 2022

Criminal Procedure and Investigation Act, Cap 25 of 1996

Appellant Jurisdiction Act, Cap 141 R. E 2022

Tanzania Evidence Act, Cap 6 R.E 2022

The Government Notice No 9 of 1985

**LIST OF ABBREVIATIONS & ACRONYMS**

CA	Court of Appeal
CAP	Chapter
CMA	Commission of Mediation and Arbitration
CV	Civil case
DNA	Deoxyribonucleic Acid
HCD	High court division
IBID	The source cited is the same as the one immediately preceding it.
ICCPR	International Covenant on civil and political Right
LHRC	Legal and Human Right commission
R.E	Revised edition
URT	United Republic of Tanzania
UDHR	Universal Declaration of Human Right
VR	Versus



## ABSTRACT

This study aimed at determining the assessment on delaying in disposal of murder cases in Tanzania. The research was conducted in Law firms of qualified and experienced practicing Advocates of the High court and subordinate courts, Public prosecutors and Magistrates from District court and Resident Magistrate court situated in Iringa Municipality.

The practice has shown that delaying in disposal of murder cases in Tanzania is due to delaying in conducting investigation by police officers, another reason is due to low number of judges and magistrates which resulting to several postponed of those murder cases as they had a lot of cases to hear, few number of expert Witnesses such as specialist Doctors, also is another reason in delaying of disposal of murder cases this is because sometimes become very hard to find them so as to come before the court to provide their witness once you find that they are only important witness of the prosecution side, as they also still depended in their working places hence become difficulty for them to move from their working places so as to come before the court to provide their witness This study used method interview as well as documentary review to collect primary and secondary data respectively. Secondary data collected from books, journal article, unreported cases, and dissertation related to the study.

The finding indicates that most of accused person who are suspect of murder spend a lot of time by being kept in prisons because of delay in complete investigation done by police officer, low number of expert personnel and low number of magistrates and judges.

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## CHAPTER ONE

### GENERAL INTRODUCTION

#### 1.1 Introduction

This research paper Researcher write to see the problem on delaying in disposal of murder cases in Tanzania, through this research researcher tried to write more about this problem that seems to be big issue in Tanzania courts due to delay on disposing the murder cases in Tanzania, through this research researcher tried to show the different reasons for delaying on disposing the murder cases in Tanzania such of that reasons shown by researcher are like lack of magistrates due to over burden by number of crimes, Procedures used in conducting investigation which led in delaying of providing decision of murder cases, also the delay of disposal distributed by the background of the murder case, inadequate of resources, lack of specialized expertise in efficient procedure and complexity of the case.

Also researcher try to show what court of law can do in order to overcome the challenges of delaying on disposing the murder cases in Tanzania in order to protect the innocent people and provide justices to the parties, because due to this delay of disposing of murder cases in Tanzania leads to convict the innocent people instead of wrongdoers. The ways proposed by researcher to overcome this problem are like to employ expertise personnel such as public prosecutors and to allow both victims and suspects to employ their lawyers and advocates for the purpose of helping them in conducting investigation of their cases so as to speed up the process of conducting investigation rather than staying and waiting for the police officers only to conduct investigation in murder cases, This can led to conduct well investigation and come up with correct evidence that will be directly admitted to the court of law, also researcher

suggests that in investigation process the efficiency equipment should be applied in order to collect the evidence that will have no doubt to the court of law and last is to link up a good connection or relationship between police officers and public prosecutors so as avoid delaying in prosecuting Murder cases.

## **1.2 Background of the problem.**

The murder case in Tanzania seems to be criminal case that involves ones intentionally to kill someone else as shown under section 196 of the Penal Code, Cap 16 R. E 2022 as a one who causes the death of another person by an unlawful with malice aforethought is guilty of the murder.<sup>1</sup>

The murder cases in Tanzania are governed by the Criminal Procedure Act and the Magistrates Courts Act. The former governs trial procedure before the subordinate courts and the High Court at then the trial governed by the Primary courts. There are numerous bottlenecks in Tanzania's criminal justice system, and occurs in every of the system. The research will intend that why it takes a long time after a murder case has been committed for a trial to the High Court until the accused is appeared for a trial, also data shows that the police sometimes arrest the individuals before they have completed their investigation, that lead at the end to release the innocent people from the custody. This shown in the case of YUSUPH MBULULO V REPUBLIC 2018 CA405<sup>2</sup>. this case shows that an appellant which is an accused person convicted with murder case and spends twenty years at the custody but later on released due to having no case to answer. Then, once the public pressure is off them, the police take their time in continuing their investigation. As a result, the process becomes more difficult, because

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<sup>1</sup> The Penal Code, Cap 16 R. E 2022, Section 196

<sup>2</sup> 2018 CA 405

both his records of appeal of appellant was missing. Another bottleneck is the lack of magistrates due to over burden by number of crimes, also the delay of disposal distributed by the background of the murder case, inadequate of resources, lack of specialized expertise in efficient procedure and complexity of the case.

### **1.3 Statement of the problem.**

Murder case is one among the capital offence in Tanzania as shown under Section 196 of the Penal Code, Cap 16 R. E 2022 as "Any person who causes the death of another person by an unlawful with malice aforethought is guilty of the murder."<sup>3</sup> Due to the gravity of the murder offence, Tanzania set the heavy punishment to those who will involve or engage in murder offence.

The punishment set up by Tanzania to those who causes the death to another person is death punishment as provided under Section 197 of the Penal Code, Cap 16 R. E 2022 as "A person convicted of murder shall be sentenced to death"<sup>4</sup>

In implementing the disposal of murder cases in Tanzania seems to be delays due to some circumstances such as delay of investigation conducts by the police forces, incomplete of evidence like expert evidence from the personnel as shown under Section 9 of Evidence Law Act, Cap 6 R. E 2022<sup>5</sup> and delay of prosecution of murder case in court of law, but when the investigation will be conducted soon after the commission of the offence, the evidence collected will be complete that will help prosecutor to prosecute a case to the court of law early. This may reduce the delay of the disposal of the murder case in Tanzania. Example through the case of *YUSUPH MBULILO V REPUBLIC 2018 CA 405*.<sup>6</sup> in this case a person accused spent 20years under custody

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<sup>3</sup>The Penal Code, Cap 16 R. E 2022 Section 196

<sup>4</sup>Ibid

<sup>5</sup>Evidence Law Act, Cap 6 Section 9

<sup>6</sup>(2018)CA 405



and later on released from prison. The accused was charged with murder case on 1995 and later committed to the High Court on 28 January 2000, then the case postponed or adjourned due to the missing and misplacement of his records from the appeal years later and then the accused person the appellant was released since they found having no case to answer. This try to show how the delay of cases made people suffer on their right, also through Article 13(6)(b) of the Constitution of United Republic of Tanzania of 1977 as amended from time to time as "No person charged with a criminal offence shall be treated as guilty until proved guilty of that offence."<sup>7</sup>

Therefore, the researcher intends to examine the causes of delays in disposal of murder cases in Tanzania.

#### **1.4 Literature review.**

**Judge Lila;**<sup>8</sup> said revealed reasons some serious cases like murder cases take a long time to hear and determine, saying the law does not state the limit for carrying out investigation and that judges were not empowered to dismiss them however long investigation might take. Also Judge Lila said laws of the land are silent on periods investigation should take and a case should be heard although magistrates and judges were given three months to hear and to determine them. "We have no powers to dismiss cases should witnesses take a long time to be brought before the court, and this mostly happens in murder." This why the murder cases delays in its disposal in Tanzania.

**Barnes;**<sup>9</sup> Delay is a marked feature of our system of procedure. Crime is partly condoned when justice is postponed. In the rapid succession and publicity of current events the incident of crime is quickly forgot. No one notes the fact more surely than

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<sup>7</sup>The Constitution of United Republic of Tanzania of 1977 as amended from time to time, Article 13(6)(b)

<sup>8</sup> Judge Shaaban Lila J. A, delay on the criminal case in Tanzania, 2021

<sup>9</sup> Albert C. Barnes, Causes of Delay in Criminal cases, 7 J. Am. Institute, 1917

the criminal. Hence delay is his first line of defense. It is more valuable to him and sought oftener than the constitutional guaranty of a speedy trial. He recognizes that lapse of time softens the zeal of the prosecution, impairs its forces, and strengthens a fictitious defense; and everyone knows that it so far palliates the offense or obliterates its recollection that when a conviction is obtained it loses much of its deterrent influence. Whether a trial results in conviction or acquittal, it often carries to the public a common significance-that somebody at last has been tried for something that happened a long time ago. Too frequently attempted vindication of the law comes too late to carry either respect for its authority or fear of its enforcement. If these consequences are to be averted, if penal statutes are to operate as a deterrent of crime then the law must be so administered as to bring offenders to swift and certain accountability. Some desirable changes would require alteration of our state constitution, but reference will be made here to a few that can be affected without it, in the order in which their necessity is suggested. These delay for disposal of criminal cases especially in murder cases are like delay incident to jury, delay after conviction, delay incident to plead, delay incident to indictment.

**Prof Juma;**<sup>10</sup> Speaking at the Judicial Service Commission meeting at the Immigration College in Moshi, Kilimanjaro, and the CJ also proposed that Regional Commissioners (RCs) should task investigators and prosecutors to see to it that they do their duty on time instead of blaming the Judiciary for delay of cases. He said criminal cases have their bases on the mentioned officials who investigate – locate, identify and gather evidence on respective cases that are filed with the Court. Professor Juma said delay or incomplete investigation as well as failure for prosecution to complete its job, such as

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<sup>10</sup> Prof. Juma, Criminal Cases Delay in Tanzania, Africa Press. Net. 2021

calling witnesses in cases are the main reasons for delay of criminal cases. The criminal offences are always investigated and cases prosecuted by officials from the Director of Public Prosecution (DPP). Professor Juma said that delay in investigations by the Police Force that delays or halts hearing has been causing a lot of inconveniences to the citizens and residents involved in the cases in one way or another and called for an end to the same.

**Chipeta,<sup>11</sup>** in his book titled “ A Magistrate Manual” provide that “ the administration of justice depends on the joint efforts of the judiciary, police, prison, the executive and the general public, laziness, apathy, indifference, ignorance or lack of resources on the party of any of this forces contribute directly or indirectly to the delays in disposal of cases in court” Chipeta in his book tries to check the delay of investigation on criminal cases in general but he did not categorize at what kind of criminal case as researcher of this research intend to deal with murder case.

### **1.5 Hypotheses.**

It seems that there is delay on disposal of murder cases in Tanzania.

#### **1. 5 Objectives.**

##### **1. 5. 1 General Objective.**

The study intends to assess the causes for delay on disposal of murder cases in Tanzania.

##### **1. 5. 2 Specific Objectives.**

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<sup>11</sup> D. Chipeta, Magistrate's Manual, T. M. P. Book Department, 1996 Pg 162

To assess whether Tanzania laws set up the time limitation for investigation of murder cases.

To assess whether Tanzania investigators of murder case convicting the innocent people on murder cases.

### **1.6 Significance of the research.**

According to this study signifies on checking the reasons and impacts of delay on disposal of murder cases in Tanzania. This study based on checking the circumstances that leads on delay on disposal of murder cases in Tanzania and due to this study those causes for delay shown; also researcher shows the best methods of overcoming those reasons leads for the delay on disposal of the murder cases in Tanzania.

Also through this research helps the Criminal Justice system to use or employ the professional investigators and expertise personnel who have more experience in investigating the murder case and come up with complete evidence at a short time without wasting or using a long time for conducting investigation, but also the Criminal Justice System should have the well or competent equipment's that used in conducting investigation of murder cases, because through this equipment's helps to bring the competent evidence that directly admissible in the court of law and then the disposal of murder case will be done in short term without wasting time.

In addition, through this study researcher helps the law makers to make laws and regulations that will enforce effective investigation on murder cases in order to avoid convicting innocent people in murder cases, this is due to fact that seems Tanzania due to having inefficiency investigators and without time limit for murder cases investigation lead the prosecution of innocent peoples who later on released from the custody after spend much time in a custody.

## 1.7 Research methodologies.

Through this research a researcher applied the doctrinal methods in data collection, due to fact that a researcher employed on the use of primary sources of data that comprised of Constitution of United Republic of Tanzania of 1973 as amended from time to time, the use of Penal Code, the use of Criminal Procedure Act and the use of Evidence Law Act.

In addition, the research involved the use of secondary data due to fact that the research comprised the use of books, journals and internet sources.

### 1.7. 1 Sampling.

Through this study a researcher applied the random sampling technique in order to give equal chance of participation in a community to discuss the matters that leads on the delays of disposal of murder cases in Tanzania. Due to the use of random sampling enabled a researcher to get more information that helped a researcher to accomplish this work.

### 1.7. 2 Sampling technique.

A researcher involved two judges from Iringa High Court in order to ask them why there has delay on the disposal of murder cases in Tanzania, those answers that provided by the two judges from Iringa High Court helped researcher to accomplish a work because got direct answers from the Justice machinery.

Also a researcher passed directly to the police forces who conducts the murder cases investigation to ask them why a person convicted from the murder case later on released from the custody and having no case to answer even though they have conducted investigation and they convict wrong person why are convicting innocent people as shown to the case of *Republic V. YUSUPH MBULULO 2018 CA 405*

Also in more clarity a researcher found one or two persons who convicted wrongly from the murder case and later on released from having no case to answer even though charged from the murder case.

### **1. 7. 3 Research data collection.**

The researcher applied the following methods to collect necessary information that helped to accomplish the research.

#### **1.7.3.1 Documentary Review.**

Researcher applied the documentary review methods to gather data which has already found in previous written documents such as statutes, case laws, text books and other materials relevant to the study which collected from Ruaha Catholic University library and those provided by the parliament library.

#### **1.7.3.2 Interview.**

A researcher applied the interview method in collecting the information; this method helped a researcher to get more information to add information obtained from the documentary review. The researcher used the interview method to obtain firsthand information that conducted face to face interview with interviewees and this type of data collection known as primary data.

### **1. 8 Scope and limitation.**

#### **1. 8. 1 Scopes.**

The aim of this study could have been conducted country wide rather than conducting in Iringa region only, because the issue of delay on disposal of the murder cases not happen in Iringa High Court only but this happen country wide. But due to the time limit and limited budget led difficult to a researcher to conduct a research country wide rather than conducting in Iringa region especially in Iringa High Court.

## 1. 8. 2 Limitations.

Through this research challenged a researcher to get more information due to the lack of efficiency materials from Ruaha Catholic University Library that relates to this study, that led difficult to a researcher to accomplish this research, also would be difficult for a researcher to get a person who convicted from murder case and later on released from the custody due to having no case to answer. The time and financial problem also limited a researcher to accomplish this research because the time is too limited with limited budget, also a researcher challenged by the legal terminologies that is difficult to be understood well, because the most legal document has written by using the legalese.

In overcoming those limitations a researcher tried on best way to make sure that gather information relates to the study even outside the library of Ruaha Catholic University in order to accomplish the study, on the issue of getting a person released from conviction of murder case a researcher tried on the best way to get even one among of them but on the issue of time limit with limited budget a researcher tried on the best way to make sure that spends the loose hours and spends the amount remain in order to make sure that the research accomplished , also in overcoming the issue of legal terminologies a researcher used the legal dictionary to search those words seems to be more complicated to be understood by normal person but where failed to get the legal dictionary researcher applied online legal dictionary to get those meaning of the words that was difficult to be understood to researcher in order to make a research well understandable every one.

## CHAPTER TWO

### CONCEPTUAL LEGAL FRAMEWORK

#### 2.1 Introduction

This chapter is made a part of this research report, the general concept of murder is discussed as well as details as to what is murder, punishment of murder cases as well as what causes delay in disposal of murder cases also the legal frame work which consists of a contents of delay, disposal as well as a court system in Tanzania by starting with provisions of the key terms on these research.

**MURDER** is unlawful killing of another person or any person with malice aforethought causes the death of another person by unlawful or omission is guilty of murder as per section 196 of the penal code R.E 2022<sup>12</sup> and shall be sentenced to death. Therefore, murder is unlawful killing of another human without justification or valid excuse, especially the unlawful killing of another human with malice aforethought. murder as a capital offence in Tanzania violate the rights of a person as provided by a constitution of united republic of Tanzania of 1977<sup>13</sup> every human being have a rights to live and to the protection of his life by the society and accordance with the law so the research tried to protects the rights of life of a person by tried to eradicates the causes of delay on disposal of murder cases in Tanzania .

**DELAY** is the act of postponing ,hindering or causing something to occur more slowly than normal, OR to make something happen later time than originally planned or

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<sup>12</sup> The penal code cap 16 R.E 2022.

<sup>13</sup> The constitution of united republic of Tanzania 1977 As amended from time to time.



expected<sup>14</sup> as a researcher tried to show what causes the delay on disposal of murder cases

**DISPOSAL** the action or process of getting rid of something especially by throwing it away.

OR

The power or authority to make use of as one choose, therefore disposal in murder cases it refers to the solution or finalization of the cases through the judicial process.

Therefore, delay in disposal of murder cases refers to the extended of time it takes for murder cases to be resolved or concluded through the legal process that tends to signifies the prolonged duration between the initiation of the case and its final resolution, include the verdict or judgement the delay can occur at various stages of the legal proceedings such as investigations, trial, appeals and the overall administration of justices.

**COURT** is a body of people presided over by a judge, judges, or magistrate, and acting as a tribunal in civil and criminal cases or a person or body of persons having judicial authority to hear and resolve disputes in civil, criminal, ecclesiastical or military cases<sup>15</sup>.

Let it born in mind that there must be steps to follow before go directly to the high court for the trial of murder cases there are court system which must be followed as the court system of Tanzania as the following

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<sup>14</sup> [Http//dictionary. Cambridge](http://dictionary.cambridge)

<sup>15</sup> <https://www.britaLnnica>.

The primary courts are the lowest courts in the country. In the country 2020 there were almost 700 primary courts spread across the country. These courts have jurisdiction over civil and criminal matters.

District courts these are courts which have jurisdiction over more serious civil and criminal cases including those involving higher amounts of money and offences punishable by imprisonments for a long duration. There are two types of courts within these two levels which share the same jurisdiction which are resident's magistrate's courts and district courts as we termed as subordinate courts.

The high courts were established under article 108 of the constitution of the United Republic of Tanzania<sup>16</sup>. The court has unlimited jurisdiction to handle all types of cases and all appeals to the subordinate courts go directly to the high courts. The high courts are headed by a principal judge. The principal judge and other judges of the high courts are appointed by the president after consultation with the judicial service commission.

The court of appeal is the highest appellate court in Tanzania. It hears appeals from the high courts and has authority to review decisions made by lower courts. The court of appeal is presided over by a panel of judges led by the principal judge. Therefore, for the murder cases to be entertained must pass to those lower courts and finally the decision is made to the high courts.

But before on these research to go directly to the reasons for delay of disposal of murder cases firstly there are steps or procedures to be followed in proceeding or entertain murder cases to the judicial system.

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<sup>16</sup> The constitution of United Republic of Tanzania 1977 As amended time to time.

**Investigation**, is a criminal investigation conducted by a police officer with a view to it being ascertained whether a person should be charged with an offence or whether a person charged with an offence is guilty of this includes investigation into crimes that have been committed, investigation which begins in the belief that a crime may be committed for example when the police keep premises or individual under observation for a period of time with a view to the possible institution of proceedings as shown under section 23 of the criminal procedure and investigation act R.E2022<sup>17</sup>.

**Arrest**, is the use of legal authority to deprive a person of their freedom of movement is made by an arrest of warrant and every warrant of arrest shall be under the hand of judge or the magistrates issuing the same and shall bear the seal of the court as provided under the criminal procedure act section 112 R.E2022<sup>18</sup>.

**Charging**, and indictment, is a formal complaint usual is writing made before a court is alleging that a particular person has committed an offence with a view of putting a criminal law effect into motion and it the duty of the court to ensure that the charge filed is correct in both form as provided under section 135 of the criminal procedure act R.E2022<sup>19</sup>.

**Preliminary hearing**, the suspect will have a bail hearing whether the courts will determine whether to grant bail or remand the suspect into custody pending trial so in order to provide spread of disposal of the case as per section 192 of the criminal procedure act and procedure for preliminary hearing is govern by the government

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<sup>17</sup> Criminal procedure and investigation act 2022.

<sup>18</sup> Ibid

<sup>19</sup> Criminal procedures act R.E 2022

notice no 9 of 1985 which is published by the minister of justice and constitutional affairs in the consultation with chief justice<sup>20</sup>

**Trial**, is a determination of a person innocent or guilty due to the process of law a judge will hear the evidence presented by both the prosecution side and the defense side and the witness will be called evidence will be presented and both side will have the opportunity to present their arguments and cross examines witness.

**Judgement**, refer to the final decision or ruling made by court or judge in a legal case it is the formal determination of the right and obligation of the parties involved in the case also judgement should be written in order to determines the guiltiness of the accused person as per section 311 of the criminal procedure act R.E 2022.

**Sentence**, is a judgement formally pronounced by a court upon a defendant who has been found guilty of a crime or it is the penalty imposed by court which mat imposed which involved imprisonment, fines, probation, community services or other forms of punishment. a sentence typically reflects the seriousness of the crimes for the aims of provides justice <sup>21</sup>. As on the research the person who committed murder cases is sentenced to death and sentence shall direct that shall suffer death by hanging as per section 26 of the penal code R. E 2022 and section 322 of civil procedure act R. E 2022 But also the courts provide the periods within 12 months for an appeal and by disposal of exhibit as shown under section 353 of the criminal procedure act R. E 2022.

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<sup>20</sup> The government notice no 9 1985

<sup>21</sup> Black law dictionary

Having that procedures of dealing with murder cases the following are the reasons which causes delay in disposal of murder cases in Tanzania especially in Iringa region which shown by a researcher of the research that causes violation of human rights.

## **2.2 Incomplete investigation**

once the incidence is reported at police station there is a file opened and the instruction is given to the investigation officer and the investigation officer visit on the scene of the events liquors in quo to collect evidence and accused taken to the custody waiting for the investigation to be complete some murder cases often involves complex investigation require extensive evidence collection forensic analysis and witness interviews so the investigation process encounters challenges such as locating witness and obtaining crucial evidence that causes delay of disposal till the evidence to be complete.

## **2.3 Backlog of Cases,**

An overwhelming number of cases in the judicial system can lead to delays limited resources including judges, prosecutors and contributed to a backlog the high number of cases awaiting trial it takes the longer the murder cases to be heard.

## **2.4 Lack of specialized expertise**

the lack of expertise in murder cases can pose significant challenges to the investigation and prosecution of these crimes specialized expertise in crucial such as in such cases because murder investigations require a thorough understanding of various forensic disciplines, legal procedure and investigations techniques such as autopsy and pathology determine the cause and manner of death is a critical aspect of murder forensic pathologists who are experts in examining deceased bodies that can provides

valuable insights into the circumstances surrounding the death and help establish the cause of death also sometimes it needed to adding the DNA evidence will especially slow down the case on disposal and some cases needed defendant to go through a psychiatric evaluation.

## 2.5 Complexity of the case

due to the nature of the crimes and complication involves in the case can cause the delay in disposal of murder cases such as the nature of the matter being of public interest and taking into account the complication in investigation and having looked at the caution statements in issue which contains information relevant to the facts in issue there is no way the way can be said that the omission to comply with the provision of section 50 of the criminal procedure act R.E 2022 such as the case of Republic V James msumule , Emmanuel ngailo , Izack Ngailo, Anitha Mbwilo and Upendo Mligo [2004] HCD 84<sup>22</sup> at these case the five respondents are charged with murder contrary to section 196 and 197 of the penal code R.E2022 <sup>23</sup> It is alleged that the five respondent murdered one Alice Mtokoma at usalule village the trial commenced on 2018 when the trial of the respondent was still in progress the investigator of the case leave the trial court to tender a cautioned statement of the fifth respondent which she gave to the police but there was no plausible explanation given to be taken for the prescribe time argued that before reaching the decision the trial judge was supposed to direct mind to the provision of the section 50 of the criminal procedure act which provides some exceptions to the period cautioned statement includes when the person is conveyed to the police station also submitted that the statement could not be recorded at night

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<sup>22</sup> 2004 HCD 84

<sup>23</sup> The penal code ,cap 16 R.E2022.

when the fifth respondent was arrested also argued that the period of waiting for the witness to be available caused delay in recording statement and the nature of the case was complexity and teams of investigators sometimes were to move from one place to another that causes the cautioned statement in controversy not to be taken in time .

## **2.6 Inadequate of resources for conducting investigation**

In murder cases can have a significant impact on the ability of law enforcement agencies to the effectively solve the case such as modern investigation technologies advanced forensic tools surveillance system that helps to conduct evidence<sup>24</sup> so the inadequate of the resources technical for conducting the investigation causes the delay on disposal of the murder cases in Iringa region which lead to the violation of justice.<sup>25</sup> Also on the conducting these research there are some reasons for delay on disposal of murder cases which caused by subordinate's courts until the high courts for trial such as the following

## **2.7 Appeals and high court scrutiny**

when a murder case is appealed to the higher court such a higher court it undergoes a fresh examination of evidence and legal arguments the process of appeal and scrutiny by higher courts can be time consuming that lead delayed on disposal of the murder cases.

## **2.8 Adjournment and delays in hearing**

Adjournments which refers to the postponements of courts in hearing which tends to be as common in legal proceedings they can occur due to various reasons such as the

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<sup>24</sup> <https://www.fasken>.

<sup>25</sup> J.Horswell The practice of crime scene investigation 2004

unavailability of judges, lawyers or witness the frequently adjournment can significantly prolonged the duration of murder cases.<sup>26</sup>

## **2.8 Procedures complexities**

murder cases involves complex legal procedures including evidence collection ,witness testimonies ,examination of forensic reports and legal arguments these procedures can be time consuming and often require meticulous attention to detail that leading delay on disposal of the cases for the hearing of the trial to the high courts also incomplete of producers was provides in the books of justice delay is a justice denied<sup>27</sup>.

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<sup>26</sup>.<http://mzv.gov.cz>

<sup>27</sup>J.Masefo mashele . Justice delay is a justice denied 2006



## CHAPTER THREE

### LEGAL AND INSTITUTION FRAMEWORKS ON LAW AND PRACTICE IN TANZANIA PERTAINING ON DELAY IN DISPOSAL ON MURDER CASES IN TANZANIA.

#### 3.1 Introduction

In these chapter the researcher looks on how the Tanzanian laws deals with murder cases also the researcher looks on the international law on the issue of delay in disposal of murder cases how in international law deals with those murder cases so here researcher deals with domestic laws such as The criminal procedure act R.E 2022<sup>28</sup> which deals with procedures in murder offence, The penal code R.E 2022 Which deals with murder offence under section 196. Also the Laws of evidence act R.E 2022<sup>29</sup> Which provides for the credibility of proving an evidence and proving of an offence without reasonable doubt especially in murder cases but also under this chapter tried to looks also on international law concern with murder cases such as the Universal declaration of human rights of 1948 and the International covenant on civil and political right of 1976 as well as international murder cases.

#### 3.2 INTERNATIONAL LAWS LEVEL.

The issue of delay in disposal of murder cases are founds in the followings grounds of International laws.

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<sup>28</sup> The criminal procedure act R.E 2022

<sup>29</sup> The law of Evidence act R.E 2022

### 3.3 Universal Declaration of Human Rights 1948.

Adopted by the United Nations General Assembly in 1948<sup>30</sup>, set out fundamental human rights that are to be universally protected. In Article 3 of the UDHR states that everyone has the right to life, liberty, and security of person which includes protection against murder so the laws provides that everyone has the right to life and security but still there are problems on delay in disposal of murder cases.

### 3.4 International Covenant on Civil and Political Right 1976

The ICCPR in article 14 guarantees on human right which includes the right to fair trial which includes the right to timely and expeditious resolution of criminal charges in order to reduce the problem of delay in murder cases the excessive delays in legal proceedings can be considered as a violation of the fair trial under this covenant, also the followings are the international cases shows delay in disposal of murder cases.

The case of *Davis Kharon Tourches v Valenza* [2007] 1;15 CV 913<sup>31</sup> In the State of Alabama Kharon Torches Davis was arrested in 2007 for the shooting death of Pete Reaves during a robbery in Houston county he has been imprisoned for 10 years without trial ten years he still waiting for a trial because of misplaced of evidence and conflict of interests and restriction on his ability to review his own legal document in jail more delays followed the trial was postponed when the gunshot residue kit was found and the case set up to April 2016 the right to speed the trial does not come with a clear definition of speed the defendant has waited 10 years to assert his right to a speedy trial in the forms of motion to dismiss also in the book of causes

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<sup>30</sup> Universal Declaration of Human rights 1948

<sup>31</sup> 2007 1.15 CV 913

of delay in criminal cases<sup>32</sup> it provides that the issue of delay in murder cases caused injustices to a victims who spend most of life in custody awaiting for trial must be speed deliver of justice.

The Indian case of Sumedh Singh Saini VS The state of Punjab [2020] CA 827<sup>33</sup>. Sumedh Sain was charged with murder case of Vinod under the law of Indian Penal code 1860 section 216,219. but Vinod body was never found but the CBI ,Indian intelligence agency believe that the officer ,Sumedh singh Saini was responsible for his death they filled murder charges against him within a month that was 1994 twenty two years passed since the murder case began at 94 years old Vinnod mother who has no speak or hear she does not seem to understand much about life at present but when hear her son name she yells at the top of her voice 'insaaf' which means justice she used to go to court 14 years after her son went missing she ask her court to hear he statement sooner fearing she did not have long to live but the court still dismiss and adjourned for trial the accused person still waiting in custody for more than 14 years Ashish kumar who was brother of an accused keep fighting for the his brother right and said because his brother was a great man that why he spent the entire life to get his justice instead the body of deceasead was not found these case shows that there was delay in disposal of murder cases due to the adjournment of the trial court that leads to the justice Denied.

### 3.5 Domestic Laws Level.

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<sup>32</sup> Albert C .Barnes, Causes of delay in criminal Cases 1917

<sup>33</sup> 2020 CA 827

Domestic laws the issue of delay in disposal of murder cases are found in the following grounds of laws.

**The law of Penal Code, Cap 16 R.E 2022** <sup>34</sup> shows that murder case is the one among the capital offence. As per section 196 shows that Any person who causes death of another person by unlawful with malice aforethought is guilty of the murder.

Due to the gravity of murder offence, Tanzania set the heavy punishment for the commitment of murder or engage and involved in murder cases. The punishment set up by Tanzanian law for those who cause the death to another person is punished to death as provided under section 197 of the Penal Code, Cap 16 R.E 2022 <sup>35</sup> as A person convicted of murder shall be sentenced to death this shows that Tanzania law set a punishment for an offence of murder in law of Penal code, Cap 16 R.E 2022 But still there are problems of delay in disposal for the murder case due to reasons like missing and misplacement of records that cause the provision of the rights to take long time although the laws are already set for a person who commit an offence but still in court there are problems for example in the case of **YUSUPH MBULILO V REPUBLIC** [2018] CA405<sup>36</sup> this case provides that more than twenty three years ago on 28/01/2000 the high court of Iringa in criminal case no 9 of 1995 convicted the appellant Y USUPH MBULILO of murder and sentenced him to suffer death by hanging before the appellant who has so far spent thirty years in custody, is still waiting for the registrar to supply him with the records of appeal seek his fundamental right to appeal right against his conviction on 28/01/2000 and first reach to the court on 30/05/2018

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<sup>34</sup> The penal code, Cap 16 R.E 2022, Section 196.

<sup>35</sup> Ibid

<sup>36</sup> 2018 CA 405

,looking for an extension to file his appeal to the court but when appellant appeared there was adjourned of hearing because of the missing trial court proceedings on 20/10/2015 he applied to the high court at Iringa for an extension of time to file notice of appeal for the extension on time to file notice of appeals the court reasonable that section 11[1] of the APPELLANT JURISDICTION ACT, CAP 141<sup>37</sup> gives the high court power to hear the appellants application of time finally on 31 /10/2018 the appellant filed his notice to appeal at the high court of Iringa but on 25/10/2022 as another date of hearing the appellants appeal in Iringa the records of trial proceeding was still missing and incomplete that cause the appeal still not proceedings the records of appeals does not carry the charge sheet with the statements of offence and particulars of murder also the judgment of the trial high court which convicted and sentenced him to death is also missing the court provides that without charge sheet we cannot at very least know the nature of the unlawful death the appellant cause or where and when he caused it. we do not know even the deceased name for whose death that the high court convicted the appellant .On 19<sup>th</sup> day of August,2023 In the judgment the court After considering the appellants served in custody for twenty years and more than twenty years searching for the rights of appeals the court order the appellant immediate released in prison.so the problems comes some innocent people spent more years in custody as the case shows and finally released that have not guilty and quashing the conviction the chief Registrar of the judiciary and the Registrar of the court of appeal as well as high court registrar and all the deputy registrar should ensure the using of digitalization for the elimination or minimize incidents of missing court of records.

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<sup>37</sup> Appellant Jurisdiction act, cap 141 2022

**The law of Evidence Act Cap 6 of 2022**<sup>38</sup> in section 9 provides that facts which are the occasion, causes or effects immediate or otherwise of relevant facts or facts in issue or which or constitutes the state of things under which they happened or which afforded an opportunity for their occurrence or transactions, are relevant these means that incomplete of evidence like expert evidence from the personnel can cause delay in those murder cases in court of law but when the investigation will be conducted soon after the investigation will avoid and help for the side of prosecutor to prosecute a case to the court of law early also in section 19 of the law of Evidence act cap 6 of 2022 provides that an admission which suggests any inference as to a facts in issue or relevant facts and which is made by any of the persons shall be to the relevant of facts and also in section 22 provides that statement made by person to whom a party to the suit has expressly referred for information in reference to a matter in disputes are admission so these mean that the law provides that the admission must be relevant to the facts but the researcher observed that there are circumstances that the evidence provides by the parties to the suit are not relevant to the facts that are incomplete that causes the delay in disposal of murder cases as shown in the case of *Yusuph Will Jojo vs R* [2020] CA 172<sup>39</sup> In these case the appellant was charged with murder contrary to section 196 of the Penal code Cap 16 R.E 2022<sup>40</sup> At Iringa high court the appellant was charged with murdered one Ignas Mduo who was his supervisor as the appellant was the driver of a tricycle owned by the deceased brother but in the case during the provision of evidence it was provided that from appellant defense that though he disputed to have killed the deceased but there are some facts in relation to exhibit which are not in

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<sup>38</sup> The law of Evidence Act, cap 6 section 9

<sup>39</sup> 2022 CA 172

<sup>40</sup> The penal code cap 16 R.E 2022

records which are irregularity procedures in admitting and relying on exhibits and the judge insist that the stated procedural irregularity prejudiced the appellant as miscarriage of justice occasioned also the third evidence is insufficient to prove the case beyond reasonable doubt also the assessors participation was not in accordance with the law contrary to section 298[1] of the Criminal procedure act R.E 2022<sup>41</sup> Shows that the judge may sum up the evidence for the prosecution and the defense and shall then require each of the assessors to state his opinion orally as to the case generally and as to any specific question of facts addressed to him by the judge and record the opinion .these means that the evidence must connected to the offence the appellant was charged the case in the finally provides that the conviction was quashed and set aside the appellant sentences and the court ordered the retrial and appellant remain in custody pending retrial these causes delay in disposal of the case because of incomplete of evidence to the expert and the problems of assessors who are not in accordance to the provision of law so the researcher observed the provision of irrelevant fact in the matter of evidence an miscarriage of evidence by expert cause denied of justice and delay in disposal of murder cases so the administration of justices depends on the joint efforts of judiciary, police, executives and general public as provided under the book of Magistrate Manual<sup>42</sup>

**The law of Criminal Procedure Act R.E 2022<sup>43</sup>** Provides for the procedures to be followed in entertain murder cases to the judicial system such as arrest and investigation the police investigate the crime scene and gather evidence and once they have sufficient evidence or probable cause they make an arrest and then followed by initial appearance

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<sup>41</sup> Criminal Procedure Act R.E 2022

<sup>42</sup> D.Chipeta, Magistrate Manual, T.M.P Book department 196 pg 162.

<sup>43</sup> Ibid

of the accused before the court and will be informed the charged against them and their rights also the accused may have opportunity to request legal representation also there are bail hearing if the accused person has been arrested and bail hearing may be held to determine whether the accused person should remain in custody or should release in bail pending trial also there are stage of plea the accused will plea of guilty or not guilty and if plead guilty the court proceeding to sentence after plea it followed by trial the trial takes place in front of judges by depending on the jurisdiction the prosecution present the case which including calling witnesses and presentation of evidence which must be relevant to the facts of the cases and the defense side has the opportunity to cross examine witness and present its cases followed by judgement which are final decision by court or judge and the judgement should be written in order to determines the guiltiness of the accused person as per section 311 of the criminal procedure act R.E 2022 And the lastly is sentence which is the judgement pronounced by a court upon a defendant who has been guilty or is the penalty imposed by court which may involve imprisonment, fines, probation or other forms of punishment and in the offence of murder as the capital offence is punishment to death as provides under section 196 of the Penal code R.E 2022 As any person who causes death of another person is guilty of murder and shall be sentenced to death as shown under section 197.but instead those procedures of murder cases are there by law but still there are problems in delay in disposal of the murder cases as shown in case of Yusuph Mbulilo v R 2018 CA 405<sup>44</sup> The case show that the accused spent 20 years in custody and later on released because there was missing and misplacement of evidence from the appeal so through these case the researcher observed that the law makes the

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<sup>44</sup> 2018 CA 405



procedures to deal with murder cases under the Criminal procedure Act R.E 2022<sup>45</sup> but still there are problems in conducting investigation by police officers also misplacement of records by courts that leads the innocent people to suffer many years in custody for the hopes of right to appeal which also causes them to deny their right to appeal for waiting for many years because the law does not provide limits to carrying out investigation and judge who is not empowered to dismiss them however long investigation might take place witness take long time in custody before the court which shows the justice delayed is a justice denied.

**The constitution of united republic of Tanzania of 1977** <sup>46</sup>as amended from time to time under Article 13[6][b] It shows that no person charged with a criminal offence shall be treated as guilty until proved guilty of that offence these article shows that the delay in disposal of murder cases made people to suffer on their rights in order to provide the rights to their people the Constitutional of Tanzania of 1977 as amended time to time also under Article 108 the constitutional established the High court which have unlimited jurisdiction to handle all types of cases and to handle all appeal to the subordinates courts go directly to the high court the high court which are headed by the principal judge and other judge of the high court which appointed by presidents after consulting with judicial services commission according to the Constitution of United Republic of Tanzania of 1977 <sup>47</sup> in article 14 stated that Every person has the right to live and to the protection of his life by the society in accordance with the law also provides that every person has the right to freedom and to live as a free person for the purposely of preserving of individual freedom and the right to lives also its

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<sup>45</sup> The criminal procedure Act R.E 2022

<sup>46</sup> The constitution of United Republic of Tanzania of 1977 as amended time to time.

<sup>47</sup> Ibid

provides that no person shall be arrested imprisonment ,confined, detained, deported or otherwise be deprived of his freedom also in article 15[b] provides for the circumstances that in the execution of a judgement ,order or a sentences given or passed by the court following a decision in a legal proceeding or a conviction for a criminal offence. The constitution protects the rights of a life of a person by tried to eradicates the delay in disposal of murder cases by providing the right to life also protects justice by established the high court which a have mandate to hear all murder cases and all appeals cases from all subordinate's courts so the constitution also provides no person shall be treated as guilty until proved guilty in order to protects the right of life but there are people still suffering in custody in many years and later on released free because of misplacement of the records which leads to the violation of the human right of live and freedoms as the case of *Yusuph Mbulilo v R* [2018] CA 405<sup>48</sup> .

### 3.6 Conclusion

Therefore, the laws provide the procedures in instituting murder cases but still there are problems of delay in murder cases and stil people staying in custody for a long periods of time the laws should amended in order to reduce the problems of delay in murder cases in Tanzania.

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<sup>48</sup> 2018 CA 405

## CHAPTER FOUR

### RESEARCH FINDINGS

#### 4.1 Introduction

In this study the Researcher applied various methods to collect data such as library research and Interviews method in proving that there is such problem of delaying in disposing murder cases in Tanzania which cause violation of justice for people who spend most of their times in custody for waiting of the trial until decision of their murder cases also the researcher observed that justice delayed is the justice denied because some of the cases an accused spends more time in custody and later on finds out that he/she is not guilty which causes difficulties to them and denial of their rights.

Through this research the library research was conducted by the researcher ,the researcher found that most of the writer wrote on the problem of delaying in disposal of murder cases that caused by different circumstances such as incomplete of evidence such as the expert evidence as shown under section 9 of the law of Evidence act, Cap 6 R.E 2022<sup>49</sup> it found that the evidence that was conducted is unrelated to the reasons that the evidence does not clearly or directly related to the case that caused the case to take more time until the decision was made also delayed of investigation caused the problem of disposing of murder cases the researcher found that in our country Tanzania

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<sup>49</sup> The Evidence Act Cap 6 R.E 2022

the investigation was conducted only by the police there no private investigators according to our laws that can conduct investigation also these makes the problems of delayed on disposal of murder cases because sometimes it found that there are cases that an accused that caused death is a police so it's difficult for conducting the investigation but when the investigation is conducted soon after the commission of the offence the evidence collected will be complete that helps prosecutor to prosecutes a cases immediately also the law does not state the limit for carrying out investigation and judges were not empowered to dismiss them how long investigation might take ,also low numbers of judges compared to the number of cases caused delay on disposal of murder cases ,lack of specialized expertise and resources of conducting investigation also complexity of the case.

#### **4.2 Data Analysis and Findings Based on Documentary Review**

The researcher on conducting library research found that, most of writers wrote on the problem of delayed in murder cases such as the following.

CHIPETA, in his book titled as **A MAGISTRATE MANUAL**<sup>50</sup> provides that the administration of justice depends on the joint efforts of the judiciary ,police, prison ,the executive and the general public laziness, apathy, indifference , ignorance or lack of resources on the party of any of this forces contribute directly or indirectly to the delays in disposal of cases in court also he tries to show how delay in investigation can lead to delay in justice in criminal cases such as murder cases.

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<sup>50</sup> B.D.Chipeta .A Magistrate Manual 1996

FRANK MWELA, In his book titled **JUSTICE DELAYED IS JUSTICE DENIED PRINCIPLE**<sup>51</sup>, Mention the issue of investigation process we have in our country as one of the factor which led in delaying in disposal of criminal cases including murder cases, where the author portray this point as it become very difficult for the police officers to complete investigation in time especially for those cases where police officers are involved in committing criminal cases especially murder cases because it seems that they **ACT AS JUDGE IN THEIR OWN CASE** as there is no other way than involving themselves to make investigation for their own cases so there might be a chance for hiding some important evidence and delaying in completing investigation under such circumstances and hence may result into delaying in disposing of murder cases .Example in the case of **THE REPUBLIC VS G.2573 PC PACIFICUS CLEOPHANCE SIMON (2013)**<sup>52</sup> where in this case the Accused person was a police officer charged with murdered of one Daudi s/o mwangosi where the accused alleged charged committing such event on 02/09/2012 at Nyololo village within Mufindi District in Iringa Region where a deceased person was a news reporter who was shot by bullet from accused person who was a police officers and he was tried to stop demonstrations organized by chadema supporters, the event occurred December 2012 but decision of this case provided in 22/06/2016 where accused sentenced to serve 15 years imprisonment after being convicted with manslaughter so if you calculate a time from the occurrence of an event to the date of decision you will find out there is delaying in disposing a decision of this case.

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<sup>51</sup> F. Mwela ,Justice Delay is a Justice denied principle 2013

<sup>52</sup> 2013 HCD

ALBERT C BARNES on his book called as **CAUSES OF DELAY IN CRIMINAL CASES**<sup>53</sup> said that delay is a marked feature of our system of procedure no one notes the fact more surely than the criminal hence delay is his first line of defense it is more valuable to him and sought oftener than the constitutional guaranty of a speedy trial also Barnes recognized that the lapse of time softens the zeal of prosecution, impairs its forces and strengthens a fictitious defense the offence or obliterates its recollection that when a conviction is obtained its loses much of its deterrent influence whether a trial results in conviction or acquittal, it often carries to the public a common significance that somebody at last has been tried for something that has been happened a long time ago the law comes too late to carry either respect for its authority or fear of its enforcement if penal statutes are to operate as a deterrent of crimes then the law must be so administered so as to bring offenders to swift and certain accountability .some desirables changes would require alteration of our state constitution but reference will be made here to a few that can be affected without it in order in which their necessity is suggested , that will expedite justice and respect for law because these delay for disposal in murder cases are like delay incident to jury, delay after conviction, delay incidents to plead as well as delay incident to indictment

WILLIAM E GLADSTONE in his book called as **JUSTICE DELAYED IS JUSTICE DENIED**<sup>54</sup> he said that the delays can lead to degradation of evidence victims and witness can die or becomes unavailable times can damage their memories and they become uncertain delays also can compromise the rights of the accused particularly if they are detained is often used to emphasized the importance of timely and efficient

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<sup>53</sup> Albert C Barnes, Causes of Delay in criminal cases 1916

<sup>54</sup> William E Gladstone, Justice delayed is Justice denied 2018

delivery of justice when a legal system fails to provide justice in timely manner it can lead to frustration, loss of faith in the system and even further injustices court cases can drag on for months or even years and decades with defendant and victims alike suffering as a result for a victims of crimes for long wait of justice can be specially painful they may feel that the system is not taking their suffering seriously or that the accused is getting off too lightly defendant too may suffer during long legal proceedings, with their lives put on hold and their reputation tarnished even if they are ultimately found innocent as the case of *R VS YUSUPH MBULILO* [2018] 405<sup>55</sup>.

### 4.3 Data Analysis and Findings Based On Interviewers

Going through interviews which researcher conducted inform of discussion with interviewees who mostly were practicing and experienced advocates and legal officers from various law firms in Iringa region, the researcher found that most of them appreciated that there is delaying in disposing of murder cases in Tanzania by mentioning some of the factors are such as

**The law allow only the police officers to conducting investigation of criminal cases, including murder cases which resulting to adjournment of those cases by prosecution sides due to incomplete in conducting investigation,** advised and proposed to make amendments in our laws by allowing private advocates and lawyers to be allowed to participate to conduct investigation for those parties who may employ them and wishes

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<sup>55</sup> 2018 CA 405

their criminal cases to be completed or disposing faster as in other developed countries doing like Democratic Republic of Korea.

The advocates from various law firms in Iringa Region agrees that the **issue of police officers to make investigation in cases where they involved themselves is like to leave them to be judges in their own cases**, so we have to amend our laws and they proposed that where it happens police officers committing criminal offences such as murder then there must be other means of conducting investigation which is not involving police officers and they going further by suggesting that its better under such circumstance public prosecutors to be used to make investigation so as to make justice and to hurry up in disposing murder cases and criminal cases in general.

Researcher also through this way of interview observed and proved that **delaying in disposing decision of murder cases is due to lack of enough judges**, this views obtained from various experienced and practicing advocates and legal officers from various law firm at Iringa Region where they proved that sometimes they had criminal cases especially murder sessions before honorable judges but finally resulting to several adjournments of their cases due to the reasons that honorable judges have other session in other region hence this prove to researcher that there is shortage of numbers of judges of high court hence this led in delaying in disposing of murder cases in Tanzania.

Through conducting interview research also the advocates on the law firms provides that **incomplete of evidence leads to the delay on disposal in murder cases and sometimes the cases can adjourned and final be quash**, as they provided the case of **R VS SUSUPH WILLY JOJO [2020]CA 172<sup>56</sup>** In the high court of Iringa the appellant

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<sup>56</sup>2020 CA 172



was charged with murder contrary to section 196 of the penal code cap 16 R.E 2022<sup>57</sup> he was convicted and sentenced to suffer death by hanging the prosecution evidence before the trial was to the effect that on 21 july,2014 the appellant murdered one Ben Ignas Mduo who was his supervisor as the appellant driver of a tricycle owned by the deceased brother but the evidence that was found was insufficient to prove the case beyond reasonable doubt the advocates of the accused prayed that the first ground of appeal should quash the conviction and set aside the appellant sentences with an order releasing him from custody instead of ordering a retrial as it will not be in the interest of justice he argued to order retrial for found that justice was not done to the appellant the court finds to the contrary it should be taken that the said procedural irregularities were committed by the trial court in which case both parties were prejudice it cannot be said with that the prosecution did not discharge its duty properly to justify acquittal of the appellant or an assertion that ordering a retrial may allow the prosecution to fill in evidence gaps. There was no sufficient evidence on records of appeal against the appellant to prove beyond reasonable doubt the court should not order for a retrial in the judgement the court provides that the upshot and on the strength of the first ground of appeal allow the appeal ,nullify the proceeding ,quash the conviction and set aside the appellants sentence the appellant remain in custody pending retrial.so in the circumstances as the case provided that the incompetence of evidence can lead to the delay on disposal on most of murder cases because the law provides that the evidence should be proved without any reasonable doubt means that the evidence presented and the arguments put forward by the prosecution establish the defendant's guilt so clearly that they must be accepted as fact

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<sup>57</sup> The Penal Code Cap 16 R.E 2022.

by any rational person so there must be collection of evidence immediately after the occur of an offence of murder cases in order to prove without reasonable doubt and reducing of delay in disposal of murder cases in Tanzania as provides in the law of EVIDENCE ACT R.E 2022 Section 114 [1] <sup>58</sup>sets standard of proof beyond reasonable doubt can reduce incomplete of evidence and lead immediate provision of justice.

The researcher observed that the **Evidence recorded sometimes not related to the offence that leads reasonable doubt that cause delay on disposal in murder cases,** such as the case **R VS LAZARO MOJERWA SEPU [2021]CA 42**<sup>59</sup> The accused was charged with an offence of murder contrary to section 196 of the penal code R.E 2022<sup>60</sup> the accused person stands charged after causing the death of his mother the prosecution facts shows the incident occurred on the 8<sup>th</sup> day of February 2016 and evidence of the witness provides that the accused was found with machete that having blood but the evidence on record convinced and satisfied that the charge of murder against the accused person has not been conclusively proved beyond reasonable doubt because the sequence of evidence , facts and events can be traced from the day the accused the accused took machete and went to kill his mother because the accused went to first and second witness while still have machete that had blood also the was drink before killed his mother its provides that the sources of conflicts between accused and his mother is because of death of the accused children and his wife which the accused blamed that his mother be witched them the conduct of the accused before and after the death shows that the accused was responsible for the offence of manslaughter and not murder charge all these sequence of related events between accused person and

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<sup>58</sup>Ibid

<sup>59</sup> 2021 CA 42

<sup>60</sup> The penal code R.E 2022

his mother creates doubt as to whether the accused person had malice aforethought or intention to commit an offence of murder but final the accused was charge by manslaughter and not murder that was charged earlier these increasing delay on disposal in many of murder cases as the case provided .

During the interview research by an advocates in law firm they explain that disposal of murder cases also caused by **miss record of evidence due to a procedures error as the confession was recorded**, as prescribes by the criminal procedures act R.E 2022,<sup>61</sup>They explain that sometime miss record of evidence caused delay in disposal on murder cases that the accused can stay in custody for a long period of time and later on can be released for misericord of evidence as they explain the case of *R VS MIRIAM STEVEN MRITA AND REVOCATUS EVARIST MUYELLA* [2018] HC 103<sup>62</sup>.He was the murder incident of one Elisaria Msuya who had neck mercilessly cut with a sharp object the investigation was immediately mounted by correct different samples and exhibits for evidential purposes as well as interviewing and recording statements of different person who volunteered information among the samples collected were knife, underwear/underpant, and whistle both found at the crime scene but in exercise of samples to DNA test there no any other documents that kept records of receipt samples also no finger print were taken in all physical exhibits the exhibits were handled without proper procedures for want of chain of custody from exhibits, labels it was not clear that the knives was used to cut the deceased , also it was not clear that the DNA profiles of female gender found on the sharp part of the knives were on none else than the deceased person hence proof of participation in the commission of offence as charged

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<sup>61</sup> The criminal procedure Act R.E 2022

<sup>62</sup> 2018HC103

they have failed to prove beyond reasonable doubt to the court presence of suspect at the scene of crime is not a conclusive that the participated in the commission of an offence and the judgment was provided on 23/2/2024 were the accused immediate released from prison so the accused spent six years in a custody due to misericord of evidence that caused delay in disposal of murder cases as the case provided the evidence collected to the crime scene does not match with the exhibits used to kill the deceased there is no enough evidence to prove and the law of evidence act R.E 2022<sup>63</sup> provides that there must be to prove without reasonable doubt so the expert of collect evidence like DNA test must collect evidence immediately after occur of an offence in order to reduce delay on disposal of murder cases and provide justice for people who become victims for staying in a custody for a long period of times.

Also in the International level there some murder cases that accused stay for a long period in custody waiting for a trial due to delay on disposal of those murder cases and finally found that was not guilty or sometimes a person arrested was wrongful was not commit an offence these caused injustice in most murder cases because of spends more years in a custody as the case of *STATE OF MINNESOTA VS MARVIN HAYNES* 2004 AO5-2444<sup>64</sup>. he was charged with murder with murder in 2004 of shooting HARRY RANDY who is 55 years old and after 20 years in prison he was found that he was wrong full convicted man and he was released so he spent most of his life behind bars for a crime he never committed that was a terrible injustice he come out in prison when he is 36 years old as a free man after a Minnesota court vacated his conviction as innocent there was no forensic evidence such as fingerprint or DNA Also the witness

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<sup>63</sup> The law of Evidence Act R.E 2022.

<sup>64</sup> 2004 AO5-2444

provides that he never get the good look at the suspects, and another recanted his testimony there was no video connected him to the crimes the murder weapon was never recovered the process was violated the procedures used to convict Mr Haynes were inconsistent with best practices and unnecessary suggestive so the delay in disposal of murder cases caused injustice as to Marvin Haynes who lost his right of graduate from high school because of delay on disposal of his cases of murder and after a long period of time he was found not guilty.

#### **4.4 Conclusion**

Therefore delay in murder cases lead to injustice because of most of people spends more times in a custody and finally was released as they are not guilty due to misericord of evidence they prove with many reasonable to doubt also expert evidence caused delay on disposal in murder cases also sometime evidence does not related to the crime scene as well as lack of private investigators also lack of enough judges caused dismiss of cases it takes for too long and too many instances, and our laws make it far too difficult to get the relief in order to reduce delay on disposal of those murder cases.

## CHAPTER FIVE

### RECOMMENDATION AND CONCLUSION

#### 5.1 Recommendation

In combating this problem of delay on disposal in murder cases in Tanzania as the suggestions as far as this research is concerned the following mechanism should be applying by our laws system of Tanzania.

##### **5.1.2 people should be educated on the importance of showing cooperation to the legal institution**

when the same is necessary, some legal procedures should be minimized or removed to make sure that the judgement are given within the time, lazy judicial officers should be punished in accordance with the laws so as to work effectively also to increases public awareness on the importance of timely justice delivery and the impacts of delays in murder cases can help create pressure for reforms and improvement.

##### **5.1.3The use of alternative dispute resolution methods should be emphasized.**

Alternative dispute resolution encompasses arbitration, mediation, conciliation, and other methods-short of formal litigation-for resolving disputes. Alternative dispute resolution offers several advantages over a lawsuit. It is less adversarial and in some cases can be faster and less expensive. It can also reduce court workloads.

##### **5.1.4 Increasing the number of judicial officers in our court systems.**

This is another measure to be taken in which more judicial officers should be increased in the courts so as to make sure that justice is given within a time and also proper judgement are made. However, this will make the officers enjoy their works hence increasing their effectiveness and efficiency. Therefore, this is going together with employing the new officers who will replace the retired officers in the court system.

Many post and under-graduate students are hanging in the streets with their certificates showing good performance but their efforts are useless by the government.

#### **5.1.5 To use the expertise personnel in investigation process and evidence collection.**

In order to overcome the problem of delaying in disposal of murder case such is criminal cases in Tanzania those who has a duty to collect evidence should have knowledge about the ways collecting that evidence without any doubt that means police officers who conducting investigation must be well trained in legal education so as to knows to analyses what are the important facts, witnesses and evidences or exhibits which is going to help or to be useful for prosecution sides to win their cases.

#### **5.1.6 Also public prosecution there is a need for public prosecution to cooperate with police officers in conducting investigation**

over murder cases so as to ensure the evidences and exhibits are well obtained and tendered before the court of law and this should be done because public prosecutors are the personnel who knows the laws and important evidences which are needed before the court, and this will help in managing time by stopping bringing un useful evidences and exhibits which are not even admissible before the court.

#### **5.1.7 To avoid the use of hearsay evidence at the first trial.**

A court system should avoid or reduce the hearsay evidence in convicting the murder case in Tanzania, this is due to fact that hearsay evidence brings by the third person not among of the part of the case. To do this may overcome the delay for disposal of murder cases in Tanzania because the hearsay evidence does not admissible directly to

the court of law and use for murder conviction in order to prove without reasonable doubt as provided by the law of Evidence act the R.E OF 2022<sup>65</sup>.

#### **5.1.8 To use private investigators.**

In order to overcome the problem of delay on disposal in murder cases the laws system should allow the use of private investigators to conduct investigation instead of use only the police as the first responders to the scene to secure the area, collect evidence, interview witness and begin the process of investigating the crime the private instigators and specialized units within the police department often lead the investigation working to gather evidence identify suspects, and build a case for prosecution it may help to reduce the problems of disposal on delay on murder cases in Tanzania and the murder cases to be immediately provision of justice because will be not the problem of incomplete of evidence because the private investigators are there to conduct investigation, also can reduce the problem of misericord of expert evidence and provision of justices in a specific period of times.

#### **5.1.9 Legal reforms.**

review and reforming legal procedure such as introducing time limits for different stages of trial process, can help expedite the disposal of cases the problems of delays in the disposal of murder cases can have serious consequence including prolonged suffering for the families of the victims and defendant s such as some of the victims was in the age where must be in higher learning education they loss their rights to be educated also rights to person personal freedom as provided By the CONSTITUTIONAL OF THE UNITED REPUBLIC OF TANZANIA OF 1977<sup>66</sup> as

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<sup>65</sup> The law of Evidence Act R.E 2022

<sup>66</sup> The constitutional of the United Republic of Tanzania of 1977



amended time to time under article 15 that everyone has a freedom has the rights and freedom to live as the free person also for the purposes of preserving individual freedom and the right to live as a free person no person shall be arrested , imprisoned, confined, deported or otherwise deprived of his freedom so if person spend most of his lifetime in a custody waiting for trial and final was found not guilty he loses his right of freedom to live as a free person .

#### **5.1.10 The court must take measure against prolonging investigation**

The court have responsibility of interpreting law from their duty of dealing with cases especially murder cases they observed that one of the causes of murder cases is on delay of conducting investigation so the court is supposed to have good relationship with other government department such as police and prison in order to reduce these delay on investigation on murder cases because once crime reported the police department conduct investigation to the incidents as well as to conduct the investigation for the aims of establishing the facts and brings an accused for trial in a specific periods of times that can helps to reduce delay on disposal of murder cases so the law needed to enforce the duty of each department working with courts in order to provides justice in a specific period of time and it will brings to the practices that all person are equal before the law as provided in the constitution of the united republic of Tanzania of 1977<sup>67</sup>

#### **5.2 Conclusion**

addressing the impacts of the delay, let us pass through Article 13(6)(b) of the Constitution of the united Republic of Tanzania of 1977<sup>68</sup> as amended time to time

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<sup>67</sup> Ibid

<sup>68</sup> Ibid

which provides that "no person charged with a criminal offence shall be treated guilty until proved guilty of such an offence". Therefore, the point here is proving the suspect guilty, and we cannot prove the suspect guilty until the evidence is collected and the investigation is done. However, the question is at what time those processes will be accomplished?

delay of legal proceedings in our Tanzania court system brought many negative impacts to the right seeker and the courts itself. The rights seeker (The parties) use most of their financial resources including money to attend the court, securing the attendance of their witness as well as paying for their advocates. Also the suspects of unbailable offenses as per section 148(5)A of the Criminal Procedure Act<sup>69</sup> suffer in the custody for a long time waiting for the investigation to be done as if they are found guilty. Not all offenders charged with offenses get the required punishment some of them due to this problem of delay in criminal investigation they get acquitted by the court since there is not enough evidence to prove their crimes. The courts itself also suffer from the large number of undecided cases which are pending trial. And however the decisions made are not proper since are made very quickly due to the large number of cases. Furthermore, the delay of cases in our court systems results into improper, irrational and impropriety legal judgements simply because the Judge due to the wasted time decide the case more quickly without regard to the provisions of the law.

Mental and Physical affection of the suspects due to the improper treatment by the police officer during the long restrains. Many suspects after being taken into court alleges that while in the custody for a such long particular moment they are beaten,

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<sup>69</sup> The criminal procedure Act R.E 202

harassed as well as subjected to torture but this is due to the delay of the proceedings. A good example may be noticed in the High court case of Republic v. YUSUPH MBULILO(2018)CA 405<sup>70</sup>.

Also it's a views from various suspects or accused persons charged with murder cases who spent a lot of years in prisons and finally found not guilty on the ground that prosecution side fail to prove the matter beyond reasonable doubt and various Activists proposed that there must be away in which those accused persons may be compensated by the public for the whole time they spent in serving wrong imprisonment so as to give them relief as other countries doing such as In United States Of America for instance as it have been reported current in various social medias such as BBC where ..... he has been released from the prisons after spent ..... and later on found not guilty hence being compensated by the government .This also happen in the case of Republic vs Yusuph mbulilo (2018 CA 405 <sup>71</sup> where accused person spent 20 years in prison as suspect and at the end found not guilty but there is no compensation for him.

The governments should takes measures for combat the problem of delay in disposal of murder cases by improve the working environment of our court system in Tanzania also the court to provide speed delivery of justice in murder cases also the investigators to conducting investigation in a specific period of time after the incidents was reported in order to avoid the problem of incomplete of evidence as well as miss record of

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<sup>70</sup> 2018 CA 405

<sup>71</sup> Ibid

evidence also the law system should allow the private investigators to conduct investigation not only the police also the government should produce more expert in conducting investigation in order to provide the rights to the accused who spent his life time in custody awaiting for trial as provided in the book of **THE RIGHT OF THE ACCUSED** by JOHN HOGROGIAN<sup>72</sup> It provides that the accused who spent most time in custody awaiting for trial is a justice denied for instance in our country most of the accused who lose most of their time in custody and later on released as an innocent the law does not provide the compensation of the victims such as some of the victims they lose their dreams because they are in custody but they are innocent because they are waiting for trial of their cases which investigation was not complete in a long period of time not only the accused was affected but also the family of the accused are affected so the question remains after the accused to be released as an innocent there is compensation that can be provided according to our law system these situations caused some of the cases because the accused was spent most of his time in custody after being released as an innocent they can commit a murder in reality because of injustice for staying for a long period of times in a custody also as we see in some of the cases they convicted a wrongful person and stayed in a custody for a long period of time so it's true that there is a delay in disposal of murder cases in Tanzania that lead to injustices to the victims who spend more time in custody due to the circumstances like incomplete evidence like the expert evidence from the personnel as shown under section 9 of the Law of EVIDENCE ACT, CAP 6 R.E 2022<sup>73</sup>, Also delay of investigation conducted by the police officers, also lack of number of judges caused

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<sup>72</sup> J. Horgogian *The right of the accused*, 2006.

<sup>73</sup> The law of Evidence Act R.E 2022.

delay on disposal in murder cases also inadequate of resources to conduct evidence like for the most cases happening in villages areas also lack of specialized expert in efficient procedures and complexity of the cases causes delay in disposal of murder cases so the laws must take those measures to avoid delay in disposal of murder cases as we know justice delay is a justice denied as provided in the book OF CRIMINAL JUSTICE by JOLIET JUNIOR<sup>74</sup> emphasizes on provision of justice also our CONSTITUTION OF THE UNITED REPUBLIC OF TANZANIA OF 1977<sup>75</sup> also emphasizing on the equality before the laws.

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<sup>74</sup> J. JUNIOR, CRIMINAL JUSTICE 1979

<sup>75</sup> Ibid

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