
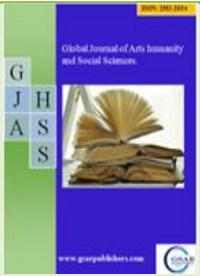


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The legal challenges facing the Effectiveness of the Laws governing Forensic Criminal Investigation in Enhancing Criminal Justice System in Tanzania

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Abstract

This study provides on the legal challenges facing the effectiveness of the legal regime governing forensic investigation in enhancing criminal justice in Tanzania thus in essence this study provided for an examination of the laws, rules, practices, regulations and international laws which provides on forensic investigation and their role in effecting the criminal justice in Tanzania. The study will introduce forensic science to society and then to further explore the impact of forensic science on criminal investigations in enhancing swift and justified justice system by focusing on the criminal justice system in Tanzania. Forensic science covers different areas to include forensic pathology, forensic toxicology, forensic DNA analysis, forensic chemistry, forensic firearm examination, and digital forensic investigation, inter alia. The application of forensic investigation has the significant of limiting the involvement and suffering of innocent people who are perceived as suspects or accused persons, for example, computer forensic can be used to track, identify and prosecute cyber-criminals, while excluding the innocents. Forensic investigation has the advantage of saving the time and resources in addition to many other benefits to the police force, criminal justice system, and society at large. The study assesses the legal and practical challenges facing the adequacy of the legal regime governing forensic investigation in enhancing criminal justice in Tanzania to include adequacy of the mandatory requirement to conduct forensic investigation in Tanzania and also absence of the specific legislation governing emerging discipline like digital forensic and last the study provides for the conclusion and recommendations.

1.1 INTRODUCTION

The application of forensic science has the significant of limiting the involvement and suffering of innocent people who are perceived as suspects or accused persons, for example, computer forensic can be used to track, identify and prosecute cyber-criminals, while excluding the innocents.¹ Forensic science has the advantage of saving the time and resources in addition to many other benefits to the police force, criminal justice system, and

society at large.² Currently law enforcement agencies around the world including Tanzania have improved their ability and capacity of crime prevention and control by utilizing forensic science methods and procedures.

Tanzanian police has adopted the usage and application forensic science in criminal investigations in 2000's, but there has been concerns are being expressed as to the nature of forensic science being utilized by the police but the concerns came as a result of the fact that the Tanzania Police Force was unable to successfully investigate and solve many crimes which people believed could have been dealt with if forensic techniques were used.³

¹ Mcewen. T. (2010). *The role and impact of forensic evidence in criminal justice systems: Ethiopian Comprehensive Justice System Reforms Program*. Ministry of Capacity Building, Justice Systems Reforms Programs Office. p.33

² Ibid

³ Shaban H., (2020) *An Overview of Th Forensic Bureau of Tanzania Police Force*. Dar Es Salaam, Dar Es Salaam,



1.2 AN OVERVIEW OF THE TERM FORENSIC INVESTIGATION

Forensic criminal investigation refers to an applied science or arts which involve finding the facts, used to identify, locate and prove the guilt of an accused criminal, as the complete criminal investigation includes searching, interview, interrogations, evidence collection and preservation and various methods of case investigation.¹¹ A criminal investigation looks for clues and evidence to determine whether a crime has taken place and if a crime has been committed, investigators may look into the background of the accused and try to uncover who committed the crime.¹²

The application of forensic science has the significant of limiting the involvement and suffering of innocent people who are perceived as suspects or accused persons, for example, computer forensic can be used to track, identify and prosecute cyber-criminals, while excluding the innocents.¹³ Forensic science has the advantage of saving the time and resources in addition to many other benefits to the police force, criminal justice system, and society at large.¹⁴

One of the main areas of application of forensic science is within criminal investigation and the primary focus of scientific analysis is to undertake examinations of items and samples of evidence collected in an effort to link a suspect to a crime scene or criminal activity, or to exonerate them from a crime they have not committed.¹⁵ Many countries including Tanzania have forensic laboratory services, which provide a wide range of scientific support to an investigation and rely on evidence submitted by investigating officers that is appropriate to the case and required examination.¹⁶ More broadly, forensic science has been used in legal proceedings to identify human remains for burial and archive or to show long-term adverse effects of environmental pollutants. The latter is an example of the expression of a forensic situation where match criteria must be established through the random comparison of physical or chemical evidence.¹⁷

¹¹ Mwaikasu, R J.A, (1995) *Criminal law*, (1st Edition), Huda Publishers Ltd Dar es Salaam Tanzania, p.56

¹² *ibid*

¹³ Mcewen. T. (2010). *The role and impact of forensic evidence in criminal justice systems: Ethiopian Comprehensive Justice System Reforms Program*. Ministry of Capacity Building, Justice Systems Reforms Programs Office. p.33

¹⁴ *Ibid*

¹⁵ Mcewen. T. (2010). *The role and impact of forensic evidence in criminal justice systems: Ethiopian Comprehensive Justice System Reforms Program*. Ministry of Capacity Building, Justice Systems Reforms Programs Office.

¹⁶ *ibid*

¹⁷ Haddrill, P. R., 2021. Developments in forensic DNA analysis. Emerging topics in life sciences. portlandpress.com

Tanzania has established a forensic science laboratory are important element in the criminal investigations and justice administration which are funded by the public.⁴ The Forensic Science Laboratory examines, reports and makes an interpretation of physical evidence in issues related to criminal from the aim of providing scientific evidences in relation to the case. Forensic science laboratory receives requests for forensic services from a various source including the law enforcement officials, police, advocates, medical examiners and correctional facilities.⁵

Though there are numerous activities which are taken by government to make things clear but there are still rumors from the community members on the criminal justice system. This is because the system releases person who are believed to be guilty, due to the failure to meet the average of evidence beyond reasonable doubts. The case of *Aloyce Mpole Kigodoi versus Republic*⁶ as an example, where in this case the Appellant was found guilty by the District Court where he was arraigned for unnatural offence without conducting DNA. Also, the court provides that there was defect in the investigation as there was contamination of forensic evidence, in this case and the court emphasize the use of DNA and other forensic methods to prove the case⁷.

Due to lack of forensic criminal investigation sometimes there are people are wrongly sentenced and executed for offence they did not do.⁸ This end up with the individual who has been sentenced and executed wrongly suffering in jail for offence they have not done; all these happen because of evidence from forensic science found at the scenes of crime.⁹ The big issue here is the justice to have insufficient application of forensic science during the investigation time which is normally done by the police division and this problem has been existing throughout the years with what looks like no end in sight.¹⁰

Tanzania, p.23

⁴ Omari, G.C., et al., (2017) *Analysis of Stress Backlogs during Casefile Processing in Forensic Science Laboratory*. Engineering, 9(12), pp.1060-1096.

⁵ Omari, G.C., et al., (2017) *Analysis of Stress Backlogs during CaseFile Processing in Forensic Science Laboratory*. Engineering, 9(12), pp.1060-1096.

⁶ Criminal Appeal No. 39829 of 2023, The High Court of Tanzania at Morogoro

⁷ Also refer the case of Republic against ACP Abdallah Zombe and 12 others as an example, The High Court of Tanzania at Dar es Salaam, Criminal Sessions Case No. 26 of 2006 illustrates contamination of forensic evidence.

⁸ Adam, C., 2016. Forensic evidence in court: evaluation and scientific opinion. John Wiley & Sons.

⁹ Adam, C., (2016) *Forensic evidence in court: evaluation and scientific opinion*. John Wiley & Sons.

¹⁰ Makulilo, A.B., (2020) *Regulatory overkill? A critical review of the intermediary liability in the context of the cybersecurity law in Tanzania*. International Cybersecurity Law Review, pp.1-12.



2.1 AN OVERVIEW OF THE TANZANIA LEGAL REGIME GOVERNING FORENSIC INVESTIGATION

Tanzania is one of the countries which have recognized and adopted the use of forensic investigation in its criminal justice system and thus the following are the laws governing the same.

2.1.1 The Constitution of the United Republic of Tanzania

The Constitution of the United Republic of Tanzania of 1977 is the mother law of land thus superior to all laws in Tanzania. The Constitution of the United Republic of Tanzania¹⁸ provide for the establishment, supervision and functions of each organ in the state as per Article 4. The establishment of the judiciary, executive and legislature tend to allocate and supervise the administration of public affairs in Tanzania and each organ has been mandated with its functions and duties.¹⁹ The Parliament is mandated with the duty to enact the laws,²⁰ the judiciary is mandated with power and duty to interpret the laws²¹ and lastly the Executive is mandated with the power and duty to enforce the law.²²

The Police Force is one of the government agencies under the Executive branch and one of the objects of the Union as specified under the First Schedule of the Constitution of the United Republic of Tanzania.²³ With regards to forensic investigation in the criminal justice system the Constitution is silent but governs issues of criminal nature under the Chapter One especially Part III which asserts different principles which are crucial for the dispensation of criminal justice. Thus, to ensure that all people are equal before the law the constitution provides that there must be fairness on the investigation to the last stage of convicting and sentencing the accused in jail.²⁴

2.1.2 The Criminal Procedure Act

The Act provided for procedures of all offences under the Penal Code shall be inquired into, tried and otherwise dealt with according to the provisions of this Act. The Act provides for the procedures of criminal investigations such as arrest, search, bail and prevention of offence,²⁵ control of criminal proceedings and institution of proceedings,²⁶ trial, examination of witness, conviction, judgment, sentences and its execution.²⁷ The Act does not make it mandatory for the police officer that he must use the forensic tools in his or her investigation but the same has been covered under Part VI of the Act which covers Trials before the subordinate and High Court. Under the provision of section 216

provides on the tendering of photographic print or a photographic enlargement from exposed film together with any photographic prints, photographic enlargements and any other annexures referred to therein, shall be evidence of all facts stated in the certificate.²⁸ Again the Act under Section 217 allows the admission of a document purporting to be a report under the hand of any Government analyst upon any matter or thing duly submitted to him for examination or analysis and report in the course of any criminal proceeding in the courts of law in Tanzania.²⁹ The same applies to a document purporting to be a report under the hand of a cyber-forensic expert, ballistic expert or any other expert over any matter or thing duly submitted to him for examination or analysis in the course of any proceedings under this Act may be used as evidence in any inquiry, trial or other proceedings.³⁰ Thus the Act allows the application of forensic investigation in criminal issues and then allows its application under the courts in Tanzania.

2.1.3 The Electronic Transactions Act

The Electronic Transactions Act is an important law which was enacted to provide a legal framework for electronic transactions generally, therefore e-filing of cases is also covered under the ambit of this Act.³¹ At first the applicability and admission of data message and electronic evidence to include the forensic reports were governed by the provision of Section and requires authentication by the witness.³² But after the 2023 amendment the same is governed under the provision of section 19 of the same Act.

2.1.4 The Police Force and Auxiliary Services and Related Regulations

This is a piece of legislation that establishes the Police force in Tanzania under section 3.³³ Among other things, it provides for duties and responsibilities to be adhered upon by the police force. The duties of the police officers are provided under the Section 27 of the Act and allows the police to investigate and interrogate the accused once apprehend.³⁴ And then the provision of Section 36 allows the application of forensic science in investigating of an offence that a police officer in charge of a police station or a police officer investigating an offence may take or cause to be taken measurements or, prints of the hand, fingers, feet or toes of, or recordings of the voice or, photographs of, or samples of the handwriting, of any person who is charged with an offence, whether the person is in lawful custody of the police or otherwise where the measurements, prints, recordings, photographs or samples are reasonably believed to be necessary for the identification of the person with respect to, or for affording

¹⁸ 1977

¹⁹ Ibid, Article 4 (3)

²⁰ Ibid, Article 64

²¹ Ibid, Article 107A

²² Ibid, Article Chapter Two inclusive

²³ Read, First Schedule of the Constitution Item 4

²⁴ Ibid, Article 13

²⁵ Part II & III of Cap. 16 [R.E 2023].

²⁶ Part IV & V of Cap. 16 [R.E 2023].

²⁷ Part VIII and IX of Cap. 16 [R.E 2023].

²⁸ Ibid Section 216 (1)

²⁹ Ibid, Section 217 (1)

³⁰ Ibid, Section 220 (1)

³¹ Cap 442 R.E 2023

³² Ibid, Section 18 of Cap 442 R.E 2022

³³ Police Force and Auxiliary Services Act Cap 322 R.E 2023

³⁴ Ibid, Section 33

evidence as to the commission of an offence for which he is in custody or charged.³⁵

2.1.4.1 The Police General Orders of 2021

The Police General Orders are issued pursuant to the authority granted to the Inspector General of Police under Section 7(2).³⁶ The directives contained in these General Orders help guide the Force personnel in carrying out their duties and responsibilities as members of the Force.³⁷ Each member is expected to follow the directives set forth in these General Orders.³⁸ When it comes to matters of forensic investigation the P.G.O 8 provides on the powers and duties of the DCI to include to provide general assistance, guidance and advice in all matters relating to the prevention and detection of crime and particularly in cases where expert opinion is sought on forensic, fingerprints, ballistics, document and physical examinations, legal advice and the framing of charges.³⁹ The P.G.O is the main directive which governs issues of the forensic investigation as it provides for the role of the police officer in an investigation, provides on how the police officer can handle the crime scene and collection of the evidences and how to forward the report and exhibits to the forensic Bureau.⁴⁰

2.1.5 The Evidence Act

The Evidence Act⁴¹ was enacted by the parliament and it has undergone several amendments until now. This is an Act to declare the law of evidence⁴² and applies to judicial proceedings before the High Court and magistrates' courts,⁴³ in alleged matter of fact, the truth of which is submitted for investigation and prosecution in the court of law.⁴⁴ The objective is to ensure the evidence is presented in a fair and impartial manner that the rights of both parties are respected in legal proceedings.⁴⁵ which provides for the relevancy of facts,⁴⁶ admissions,⁴⁷ confessions,⁴⁸ proof of facts,⁴⁹ oral and documentary evidence⁵⁰ as well as examination of witness.⁵¹ Section 110 of the Act⁵² provides that any person who desires the court to pronounce judgement on his right or liability must prove that facts exists and a person is bound to prove the

existence of facts.⁵³ All cases which are criminal in nature asserts the prosecution side to prove beyond reasonable doubt in the court as per requirement of this Act. The Act touches on admission of electronic evidences to include forensic reports under the provision of Section 70 which does allow the admissibility of electronic and data message.⁵⁴ Thus any report which is obtained through the work of a forensic expert can be admissible before the courts of law once it is well and properly tendered by the prosecution side.

2.1.6 The Inquest Act

The Inquest Act,⁵⁵ is an Act which establishes Coroners' Courts and to provide for matters relating to inquests. The Act allows the Forensic exhumation usually conducted for medicolegal purposes in order to help the judicial system to establish the cause of death or identity of an individual.⁵⁶ The procedure involves the postmortem inquiry of the exhumed body in order to establish the pathophysiology, pathogenesis and circumstances that led to the death.⁵⁷ In Forensic humanitarian matters the procedure of collection of postmortem information is compared with antemortem data to establish the identity of the individual; especially in an event involving mass graves investigation which in itself is technically more involving and is an essential tool for detectives.⁵⁸ The Act under the provision of section 9 provides on the "Power to Order Exhumation" where it state that the exhumation exercise during the inquest shall be performed by a forensic archaeologist or anthropologist or forensic specialist or medical practitioner who is well trained and certified for forensic exhumation and human remain identification, and the provision of evidence in court.⁵⁹ The proviso of section 10 of the Act provides that "Coroner may direct postmortem examination or require any Government medical practitioner within or without his jurisdiction or, in the absence of such officer, any other medical practitioner within his jurisdiction, to make an examination of the body and to report on it."⁶⁰

2.1.7 Human DNA Regulation Act, 2009

The Human DNA Regulation Act,⁶¹ is an Act to provide for the management and regulation of collection, packing, transportation, storage, analysis and disposal of sample for Human DNA, disclosure of genetic information and research on Human DNA and to provide for related matters. The provision of section 30 covers specific the collection of samples for Human DNA for criminal investigation and the sampling officer shall inform the person from whom the sample for Human DNA is to be taken⁶² on

³⁵ Ibid, Section 36 (1) of Cap 322 R.E 2023

³⁶ Police Force and Auxiliary Services (Police General Orders) Order, 2021 Government Notice 315 of 2021

³⁷ Police Force and Auxiliary Services Act Cap 322. (Supra)

³⁸ Ibid.

³⁹ P.G.O No. 8 (5) (g)

⁴⁰ P.G.O No. 225 and 229

⁴¹ [Cap. 6 R.E 2023]

⁴² Long title of Cap. 6 [R.E 2023].

⁴³ Section 2 of Cap 6 [R.E 2023].

⁴⁴ Section 3(1) of the Evidence Act, Cap 6, R.E 2023

⁴⁵ Ibid

⁴⁶ Section 7 to 18 of Cap. 6 [R.E 2023].

⁴⁷ Section 19-26 of Cap. 6 [R.E 2023].

⁴⁸ Section 27 to 33 of Cap. 6 [R.E 2023].

⁴⁹ Section 58 to 60 of Cap. 6 [R.E 2023].

⁵⁰ Section 61 to 75 of Cap. 6 [R.E 2023].

⁵¹ Section 144 to 147 of Cap. 6 [R.E 2023].

⁵² Cap. 6 [R.E 2023].

⁵³ Section 117 of Cap. 6 [R.E 2022].

⁵⁴ ibid

⁵⁵ Cap 24 R.E 2023

⁵⁶ Ibid, Section 10

⁵⁷ Ibid, Section 9

⁵⁸ Bristow, J., et al., (2011) *Forensic Anthropology: 2000 to 2010*, CRC Press, p. 3

⁵⁹ ibid

⁶⁰ ibid

⁶¹ Cap 73 R.E 2023

⁶² Ibid, Section 30 (1)

the authorization by the requesting authority has been obtained,⁶³ also must give the reasons for taking the sample for Human DNA,⁶⁴ and the procedure to be used to collect⁶⁵ and that the genetic information to be extracted from that sample for Human DNA may be used as evidence for or against that person.⁶⁶ Where the criminal suspect who has not attained the age of eighteen years from whom the sample for Human DNA is to be collected, shall have the right to have the sample for Human DNA to be taken in the presence of his parent, guardian, a representative or a social welfare officer.⁶⁷ Again the provision of section 31 provides that the collection to be humane and shall be fair, legal and where practicable not unreasonably intrusive and shall uphold human dignity.⁶⁸ And when the collection of sample for Human DNA takes place at the scene of crime the sampling officer shall have and sign and fill all documents with necessary information.⁶⁹

2.1.8 The Government Chemist Laboratory Authority Act

Government Chemist Laboratory Authority Act,⁷⁰ is an Act to provide for the establishment of the Government Chemist Laboratory Authority; to provide for its powers and functions; and to provide for matters related thereto. Accordingly, the Human DNA Act provides for the establishment of a regulator of human DNA services within the Government Chemist Laboratory Authority. This office is regulated by the Chief Government Chemist who is responsible for overseeing and regulating the administration of human DNA services in accordance with the provision of the underlying legislation. The provision of section 20 governs the issues and matters related to forensic science and other related issues including DNA services and the Authority shall make analysis using discipline on forensic science such as: (a) toxicology; (b) chemistry and illicit drugs; and (c) biology and human DNA, as may be required by any authority or as provided in the Criminal Procedures Act, Human DNA Regulation Act, the Drugs Control and Enforcement Act and other written laws.⁷¹

2.1.9 The Drug Control and Enforcement Act

The Drug Control and Enforcement Act⁷² is an Act to make robust legislative rules for efficient and effective control of narcotic drugs and psychotropic substances, to provide for the establishment of the Drug Control and Enforcement Authority (DCEA)⁷³ for the prevention and control of drug trafficking to repeal the Drug and Prevention of Illicit Traffic in Drugs Act and to provide for other related matter. With regards to forensic criminal investigation the DCEA is mandated with the power to conduct forensic

investigation as provided under the section 3 (2) (n). Also, the Third Schedule of the Act is provided the forms specifically Form No. DCEA 001 which is entitled forensic laboratory submission form which are made under the provision of section 51 (5) of the Act.

2.1.10 The Cybercrimes Act

The Cybercrimes Act,⁷⁴ is an Act to make provisions for criminalizing offences related to computer systems and Information Communication Technologies; to provide for investigation, collection, and use of electronic evidence and for matters related therewith. The Act deals with investigation under part IV which is titled search and seizure which gives the police officers with the power to conduct investigation of all cybercrimes in Tanzania.⁷⁵ The Act requires any person to disclose any information relating to a cybercrime by expressing that for the purpose of a criminal investigation or the prosecution of an offence, a police officer in charge of a police station or a law enforcement officer of a similar rank may issue an order to any person in possession of such data compelling him to disclose such data.⁷⁶ The Act provides o the use of forensic tools under section 37 which gives the police officers with the power to collect essential evidences after obtaining the order of the court to collect essential evidence.⁷⁷ The Act requires the law enforcement officer shall ensure that any modification made to the computer system or computer data of the suspect are limited to the investigation and that any changes reversed after the completion of the investigation is restored into the system.⁷⁸

3.1 The Legal and Practical Challenges facing the Legal Regime Governing Forensic Criminal Investigation in Tanzania

The study has identified different legal and practical challenges facing the effectiveness of the legal regime governing the forensic investigation in enhancing criminal justice in Tanzania.

3.1.1 Absence of Legislative Mandatory Requirement to Conduct Forensic Investigation of Criminal Offences

One of the legal challenges facing the effectiveness of the legal regime governing forensic investigation in enhancing criminal justice in Tanzania is the absence of legislative mandatory requirement to conduct forensic investigation of criminal offences. Thus, tools or instruments in forensic science laboratory are used especially when the crime itself need the in-depth investigation targeting to seek the identity of the person who committed the crime and most cases the murderers can be identified through finger print and DNA analysis. The absence of legislative mandatory requirement to conduct forensic science investigation is

⁶³ Ibid, section 30 (1) (a)

⁶⁴ Ibid, section 30 (1) (b)

⁶⁵ Ibid, section 30 (1) (c)

⁶⁶ Ibid, section 30 (1) (d)

⁶⁷ Ibid, section 30 (2)

⁶⁸ Ibid, Section 31 (1)

⁶⁹ Ibid, Section 31 (2)

⁷⁰ Cap 177 R.E 2023

⁷¹ Ibid, Section 20 (1) and (2) of Cap 177

⁷² Cap 95 R.E 2023

⁷³ Ibid, Section 3

⁷⁴ Cap 443 R.E 2023

⁷⁵ Ibid, Section 31

⁷⁶ Ibid, Section 32 (1)

⁷⁷ Ibid, Section 37 (1) and (2)

⁷⁸ Ibid, Section 37 (3)

the great challenge which led and leave the gap to the investigation machineries to conduct investigation in the normal way which as the result most of it led to unjust criminal proceedings. The study finds out that it is the real challenge to the investigation machinery in Tanzania is the lack of provision which shall obligate the police and other investigative machinery with the duty to conduct forensic science which could help the enhancing criminal justice system and dispensation of justice in Tanzania. This legal challenge was addressed in the case of *Aloyce Mpole Kigodoi versus Republic*,⁷⁹ where the court addressed that the investigative officer did not conduct DNA test to ascertain whether the accused was the actual culprit of the offence but the court was of the view it is not mandatory for the investigative officer to conduct DNA tests in order to prove penetration and the court upheld the decision of the lower court in convicting the accused by disregarding the forensic evidence.

3.1.2 Lack of Specific Legislation in the Emerging Areas Digital Forensic

Tanzania is one of the countries which does not have specific piece of legislation to govern issues of digital forensic investigation which could cutter in all issues forensic science in Tanzania beginning from the issues of investigation, procedures for collecting evidences and storage of the same and then presenting the same before the court. Forensic science is emerging rapidly due to the development of science and technology but until now there is no specific legislation to govern issues of digital forensic which led to the whole process of forensic investigation to depend of different legislation to say Criminal Procedure, Cybercrimes Act, Electronic Transaction Act, Police Forces and Auxiliary Services and its regulation to cutter the issues of forensic investigation. Most of the crimes conducted and the investigation of the same requires the incorporation of forensic investigation and the same should be governed by its own independent legislation unlike now where the same is lacking hence a challenge to the implementation of the forensic investigation in enhancing criminal justice in Tanzania.

3.1.3 Lack of Advanced Technology and Tools to Conduct Forensic Investigation

Another challenge facing the effectiveness of the legal regime governing forensic investigation under the criminal investigation in Tanzania is the lack or absence of advanced technological tools to conduct forensic investigation in Tanzania. The police stations in Tanzania including Mwanza there are no tools to conduct or collect evidences obtained from the crime scene which can help to fasten and smoothen the investigation which at large can help to enhance the dispensation of criminal justice in Tanzania and thus this is one of the challenges to the implementation of the forensic investigation rules in Tanzania.

3.1.4 Lack of Standard and Advanced Forensic Laboratory in the Police Department

Another challenge facing the effectiveness of the legal regime governing forensic investigation in enhancing criminal justice in Tanzania is the lack of standard and advanced forensic laboratory in the police department. That when there is an advanced forensic laboratory within the police department with sophisticated investigation tools specifically forensic science laboratory can made major changes when it comes to crime investigations and with the use of forensic science laboratory DNA and finger print can be scanned to identify a criminal and thus getting accurate evidence in court. Thus, availability of forensic laboratory can help to reduced biases and errors in crime investigation processes.

3.1.5 Lack of Qualified Personnel

Another challenge is the lack of qualified and competent personnel who can be responsible for implementation of laws governing forensic investigation under the criminal laws in Tanzania. The investigative machinery in Tanzania to include police and other enforcement agencies lacks qualified personnel who can work in all Regions or who can be placed in different Districts in Tanzania to cover investigate and apply forensic investigation in the criminal investigation. The study finds this as challenge due to the fact most of the personnel with forensic knowledge in Tanzania are found in the police headquarter in Dar es Salaam but in most District and Regions including Mwanza there are now or few qualified personnel with knowledge on forensic investigation also are faced with lack of advanced and standard tools which can be used in during the forensic investigations. This challenge was addressed in the case of *Shilanga Bunzali vs Republic*,⁸⁰ where in this case rejected the DNA report for failing the validity test as the sample was collected by a police officer who is unqualified and then the court end up rejecting the DNA sample and at the end the accused was acquitted.

3.1.6 Lack or Absence of Mandatory Requirement for Inter – Agency Coordination in Investigation of Offences in Tanzania

This is another challenge facing the effectiveness of the legal regime governing forensic investigation under the Criminal justice system in Tanzania. The law is silent on what time the agencies responsible for investigation issues may coordinate taking example the wildlife offences where an offence is conducted and the investigation is progressing but the wildlife rangers does not have a laboratory then must consult the government chemist or the police forensic bureau which is not a mandatory requirement but a courtesy within the investigation machinery which is the challenge to the implementation of the laws on forensic investigation in Tanzania.

3.1.7 Delay in Case Processing

Another challenge facing the effectiveness of the legal regime governing forensic investigation in enhancing criminal justice system in Tanzania is the delay in case processing by the police department or investigation department. Most of the cases which

⁷⁹ Criminal Appeal No. 39826 of 2023, High Court of Tanzania at Morogoro

⁸⁰ Criminal Appeal No. 600 of 2020, Tanzania Court of Appeal at Bukoba Registry

are reported before the police desk tends to take time in to process and most of the respondents were of the view that once the case is reported the police tend to take long time to process the same which at large led to some complication in forensic investigation. One example is the rape case was reported before the police but the investigation began after three days the time when the samples were taken to government chemist in Mwanza and then after seven days the same was transported to Dar es Salaam which at large resulted to inaccurate results and the accused was later acquitted.

4.1 Conclusion

The availability and introduction of the forensic investigation help to enhance effective criminal justice as the introduction of the laws and institutions governing forensic investigation was necessitated by the development of science and technology in the world and with the need to have effective criminal justice and ensure fair justice there was a need to adopt forensic investigation under the criminal justice system. The adoption of the forensic investigation in Tanzania there were serious offences like murder, rape and terrorism which needs serious incorporation of forensic investigations in order to attain the justice, a good example it is believed and has been asserted by different court decisions that a good evidence on rape cases comes from the victim and thus there were innocents who were convicted due to lies from the victim but with the advancement in science and technology and also forensic investigation can help to reduce these errors. Thus, it is the finding of this study that the laws, rules, practices and regulations governing the effectiveness of the forensic investigation in enhancing criminal justice system in Tanzania is effective to the extent that there are laws and institutions which governs the effectiveness of the forensic investigation under the criminal justice system in Tanzania.

5.1 Recommendations

The legislature shall amend or enact the laws which will specifically touches on matters of digital forensic as a field in order to remove the current vacuum of not having the law which is specific on these areas. The criminal procedure shall be amended to make it mandatory for the police and other investigation machineries to conduct forensic investigation during the investigation of an offence unlike now where it is not mandatory for the police to conduct forensic investigation when investigating the crime. This will help to cure the challenge by making the result of investigation accurate and avoid mishaps which may be caused by the inaccurate investigation.

The government should allocate enough resources which will help in establishing new and in every district a forensic laboratory which will help to cover issues of criminal investigation and cure the inadequacy which is experienced now that the only laboratory is in Dar es Salaam and every sample must be sent to Dar es Salaam which is the legal and practical challenge. Establishing forensic laboratories within investigative agencies would significantly improve integrity and accuracy of investigations. Also, the government shall employ more personnel with adequate knowledge on forensic investigation which help to cure the

challenge experienced currently and then the government must allocate them in every district in Tanzania and equip them with advanced tools to help them to conduct forensic investigation and help in the enhancing of criminal justice in Tanzania.

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