

LEGAL ASPECTS OF SEARCH AND SEIZURE IN RESPECT OF WILDLIFE AND FORESTRY OFFENCES FORESTRY OFFENCES¹



Forestry Offences

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Abstract

Article 16 (1) of the Constitution of the United Republic of Tanzania, 1977 guarantees, among others, respect and protection to every person, the privacy of his own person, his family and of his matrimonial life and respect and protection of his residence and private communications.² On the other hand, Article 16 (2) enjoins

the state authority to lay down legal procedures regarding the circumstances, manner and extent to which a person's right to privacy, security of his person, his property and residence may be encroached upon without prejudice to the guarantee under Article 16 (1).

A number of laws have, therefore, been put in place to regulate the circumstances and manner in which a search and seizure can lawfully be executed for the purposes of policing and law enforcement for the greater good of our nation. In this context, since any search and subsequent seizure are essentially an encroachment into a person's right to privacy, security of his person and his property, they can only be justified if they are executed within the ambit of the applicable law.³

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² Article 16 of the Constitution of the United Republic of Tanzania reads in the official Swahili version thus:

“16.-(1) Kila mtu anastahili kuheshimiwa na kupata hifadhi kwa nafsi yake, maisha yake binafsi na familia yake na unyumba wake, na pia heshima na hifadhi ya maskani yake na mawasiliano yake ya binafsi.

(2) Kwa madhumuni ya kuhifadhi haki ya mtu kwa mujibu wa ibara hii, Mamlaka ya Nchi itaweka utaratibu wa sheria kuhusu hali, namna na kiasi ambacho haki ya mtu ya faragha na ya usalama na nafsi yake, mali yake na maskani yake, yaweza kuingiliwa bila ya kuathiri ibara hii.”

³ See. *Badiru Mussa Hanogi v. Republic*, Criminal Appeal No. 118 of 2020 (unreported) stressing the rationale for controls on powers of search and seizure. That the meticulous controls under the law provide safeguards against unchecked abuse by investigatory agencies so as to protect an individual citizen's right to privacy and dignity guaranteed by Article 16 of the Constitution.

This article briefly examines the applicable procedure for executing searches and seizures under the laws regulating the wildlife and forestry sectors as well as the general law governing criminal procedure in the country.

1.0 Introduction

In trial of cases involving offenses such as unlawful possession of government trophies, unlawful taking of possession or receiving of forest produce or illegal trafficking in narcotic drugs, items such as trophies, forest produce or narcotic drugs that were allegedly found in the accused's possession and seized from him constitute crucial evidence that will establish the offence charged. They are the *corpus delicti* of the offence charged; that is, the body of the crime. There is no denying that inadmissibility of illegally or wrongly seized evidence forming the *corpus delicti* of the charged offence will eventually dent the prosecution case. For, without proof of *corpus delicti* conviction is virtually impossible. The accused's acquittal becomes inevitable.

This article briefly examines the applicable procedure for executing searches and seizures under the laws regulating the wildlife and forestry sectors as well as the general law governing criminal procedure in the country. Apart from giving commentary on the applicable law and practice, the article gives attention to areas of concern based upon a survey of the decisions of the courts of record.

2.0 Search and Seizure under the Wildlife Conservation Act, Cap. 283

Section 106 (1) of the Wildlife Conservation Act, Cap. 283 ("the WCA") vests "any authorized officer" with power of search and seizure exercisable when he has reasonable grounds to believe that any person has committed or is about to commit an offence

under the WCA.⁴

"The Director of Wildlife, a wildlife officer, a wildlife warden, wildlife ranger or police officer and includes the following -

- (a) *an employee of the Forest and Beekeeping Division of, or above the rank of forest ranger;*
- (b) *an employee of the national parks of, or above the rank of park ranger;*
- (c) *an employee of the Ngorongoro Conservation Area of, or above the rank of ranger;*
- (d) *an employee of the Fisheries Division of, or above the rank of fisheries assistant;*
- (e) *an employee in a Wildlife Management Area of a designation of a village game scout;*
- (f) *an employee of the Marine Parks and Reserve of, or above the rank of marine parks ranger;*
- (g) *an employee of the Antiquities Division of, or above the rank of conservator of antiquities; and*
- (h) *Any other public officer or any person, who shall be appointed in writing by the Director."* **[Emphasis by bolding added]**

⁴ Section 106.-(1) provides as follows:

"106.-(1) Without prejudice to any other law, where any authorized officer has reasonable grounds to believe that any person has committed or is about to commit an offence under this Act he may -

- (a) require any such person to produce for his inspection any animal, game meat, trophy or weapon in his possession or any license, permit other document issued to him or required to be kept by him under the provisions of this Act or the Arms and Ammunition Act;
- (b) enter and search without warrant any land, building, tent, vehicle, aircraft or vessel in the occupation or use of such person, open and search any baggage or other thing in his possession:

Provided that no dwelling house shall be entered into without a warrant except in the presence of at least one independent witness; and

- (c) seize any animal, livestock, game meat, trophy, weapon, license, permit or other written authority, vehicle, vessel or aircraft in the possession or control of any person and, unless he is satisfied that such person will appear and answer any charge which may be preferred against him, arrest and detain him."

Apart from the power of inspection by which any authorized officer may require any person in terms of section 106 (1) (a) of the WCA to produce for his inspection any animal, game meat, trophy or weapon in his possession or any license, permit other document issued to him, such authorized officer is empowered by section 106 (1) (b) to enter and search without warrant any land, building, tent, vehicle, aircraft or vessel in the occupation or use of such person, and also to open and search any baggage or other thing in his possession. However, the power of entering and searching a dwelling house is, according to the proviso section 106 (1) (b), subject to the requirement that its exercise must be observed by at least one independent witness.

Section 106 (1) (c) of the WCA endows any authorized officer with the power to seize any animal, livestock, game meat, trophy, weapon, license, permit or other written authority, vehicle, vessel or aircraft in the possession or control of any person. This provision also gives discretion to any authorized officer, having executed a search and or seized some material, to arrest and detain the suspect unless he is satisfied that such person will appear and answer any charge which may be preferred against him.

It is also noteworthy that section 106 (4) of the WCA provides that it is lawful for any authorized officer to stop and detain any person who he sees doing, or suspects of having done, any act for which a license, permit, permission or authority is required under the WCA for the purpose of requiring such person to produce the license, permit, permission or authority, as the case may be, or to allow any vehicle, vessel or aircraft of which he is the owner or over which he has control to be searched.

Furthermore, section 110 (1) of the WCA allows any authorized officer to erect a

temporary barrier across a highway, road, waterway, taxiway or any other place on land or water for the purpose of carrying out of the provisions of the WCA effectively. Pursuant to section 110 (2) and (3) of the WCA, any authorized officer may stop a pedestrian or a person in charge of a vehicle or vessel approaching a barrier for inspection as may be necessary to ensure that an offence under the WCA has not been committed or is about to be committed.

It is significant that power of search under section 106 (1) (b) of WCA to “enter and search without any warrant” any land, building, etc. is enacted “*without prejudice to any other law.*” This means that the said provision does not alter the preexisting position as stipulated by any other law. It is, therefore, arguable that the power of search under section 106 (1) (b) of WCA is subject to the provisions of the Criminal Procedure Act, Cap. 20 R.E. 2019 (“the CPA”), which is the general law in criminal law justice administration and law enforcement.

The decision of the Court of Appeal of Tanzania in *Shabani Said Kindamba v. Republic*⁵, would be instructive here. In that case, the Court reviewed sections 32 and 48 of the Drug Control and Enforcement Act⁶, (“the DCEA”) so as to determine if a search in the appellant’s property was executed under the provisions of the DCEA or under the CPA. The Court held that since in terms of subsection (4) and (5) of section 32 of the DCEA, which requires that arrests, searches and seizures be conducted in accordance with the law in force specifically the CPA in that case, the police officers in that case who executed the search in issue also had to comply with the relevant provisions of the CPA.

⁵ Criminal Appeal No. 390 of 2019 (unreported)

⁶ Cap. 95 R.E. 2019

3.0 Search and Seizure under the Forest Act, Act No. 14 of 2002

The power of search and seizure for the purposes of the Forest Act⁷, (“the FA”) is vested by section 93 (1) and (2) in any authorized officer, forestry officer or police officer⁸. Section 2 of the FA defines “authorized officer” as any forestry officer or other officers or person authorized in writing by the Minister for the time being responsible for forests or Director of Forestry to exercise any power or to discharge any duty under the FA or any subsidiary legislation made thereunder.

To begin with, section 93 (1) (a) of the FA empowers any authorized officer, forestry officer or police officer to demand from any person the production of any license or authority required for any act

committed by such person. **Secondly**, such authorized officer, forestry officer or police officer is allowed in terms of section 93 (1) (a) of the FA require any person whom he has reasonable grounds to suspect of being in possession of any forest produce unlawfully obtained to stop and give an account of his possession of such produce. **Thirdly**, such officer may, without warrant, search any such person or any baggage package, parcel, vehicle, boat, aeroplane, tent or building in the possession of or under the control of such person in which such forest produce may be suspected of being contained or stored.

Section 93 (2) of the FA restricts the search of “domestic buildings”, a term supposedly synonymous with “dwelling houses.” It curbs the exercise of the search power under section 93 (1) (b) of the FA in relation to the search of domestic buildings as follows: first, the said power does not extend to any such search by forest rangers, forest guards or police officers below the rank of inspector. It means that the said officers are not allowed to search dwelling houses on their own. Secondly, any search of a dwelling house by any authorized officer must be executed in the presence of, at least, two independent witnesses. It is apparent that unlike section 106 (1) of the WCA, the above cited provisions under the FA are not subject to the general provisions of the CPA.

⁷ Act No. 14 of 2002

⁸ Section 93 provides thus:

- “93-(1) Any authorized officer, forestry officer or police officer may -
- (a) demand from any person the production of any license or authority for any act committed by such person for which a license or authority is, under the provisions of this Act, required;
 - (b) require any person whom he has reasonable grounds to suspect of being in possession of any forest produce unlawfully obtained to stop and give an account of his possession of such produce and may, subject to the provisions of this section, without warrant search any such person or any baggage package, parcel, vehicle, boat, aeroplane, tent or building in the possession of or under the control of such person in which such forest produce may be suspected of being contained or stored;
 - (c) prevent the movement of, seize and detain any such forest produce or livestock in respect of which there is reason to believe that an offence has recently been committed against this Act together with any boats, aeroplanes, vehicles, machinery, tools, equipment or implements used or likely to have been used in the commission of such offence and report, any such seizure of any such property to the nearest magistrate;
 - (d) arrest without warrant any person whom he has reasonable cause to suspect that he has committed or has been involved in an offence against this Act where –
 - (i) such person refuses to give his name and address or gives a name and address which there is reason to believe is false; or
 - (ii) There is reason to believe that such a person will abscond but any officer making arrest shall ensure that person who has been arrested shall be taken to the court.
- (2) The powers referred to in paragraph (b) of subsection (1) shall in relation to the search of domestic buildings –
- (a) not extend to any such search by forest rangers, forest guards or police officers below the rank of inspector;
 - (b) Only be exercised by officers on whom such powers have been conferred by this section in the presence of two independent witnesses.

4.0 Search and Seizure under the Criminal Procedure Act, Cap. 20 R.E. 2019

As stated earlier, the power of search and seizure under section 106 (1) of the WCA is subject to the provisions of the general law (the CPA). It is, therefore, necessary that we take a look at the relevant provisions of the CPA.

At the forefront, a search may be carried out upon a warrant issued by a magistrate. It may also be effected by any police officer in charge of a police station (henceforth “OCS”) or with his written authority.⁹Section 38 of the CPA empowers any OCS if he is satisfied that there is a reasonable ground for conducting a search into a building, vessel, carriage, box, receptacle, or place without delay, either to search or to issue a written authority to any police officer under him to carry out the search.¹⁰ Section 2 of the CPA defines the designation “*officer in charge of a police station*” so broadly to include any officer superior in rank to an OCS as well as any officer above the rank of constable standing or acting in the position of OCS.

There are two imperious conditions stipulated by section 38 (2) and (3):

⁹ See *Baven Hamis & Two Others v. Republic*, Criminal Appeal No. 99 of 2014 (unreported).

¹⁰ Section 38 (1) of the CPA stipulates:

- “38.-(1) Where a police officer in charge of a police station is satisfied that there is reasonable ground for suspecting that there is in any building, vessel, carriage, box, receptacle or place-
- (a) anything with respect to which an offence has been committed;
 - (b) anything in respect of which there are reasonable grounds to believe that it will afford evidence as to the commission of an offence;
 - (c) anything in respect of which there are reasonable grounds to believe that it is intended to be used for the purpose of committing an offence,

and the officer is satisfied that any delay would result in the removal or destruction of that thing or would endanger life or property, he may search or issue a written authority to any police officer under him to search the building, vessel, carriage, box, receptacle or place as the case may be.”

one, subsection (2) of section 38 of the CPA requires that when a search is executed upon a written authority (or search order) issued by the OCS under subsection (1), the police officer who executed the search is obliged to report, as soon as practicable, the issue of the authority, the grounds on which it was issued and the result of the search to a magistrate. Two, subsection (3) imposes on the officer in charge of the search, upon seizure of a thing, to issue a receipt acknowledging the seizure of that thing, bearing the signature of the owner or occupier of the premises or his near relative or other person for the time being in possession or control of the premises, and the signature of witnesses to the search, if any.¹¹

It is also instructive to note that sections 40 and 42 (1) (a) and (b) of the CPA also regulate the conduct of searches and seizures. Section 40, for a start, provides that a search warrant may be issued and executed on any day and may be executed between the hours of sunrise and sunset. Thus, no authorization is given for executing a search between sunset and sunrise. Nevertheless, the court may, upon application by a police officer or other person to whom it is addressed, permit him to execute it at any hour.¹² With regard to section 42 (1) (a) and (b), it enacts an exception to the general requirement under section 38 (1) by providing for searches and seizures in cases of emergency. Accordingly, a search without

¹¹ Section 38 (2) and (3) of the CPA provides:

- “(2) Where an authority referred to in subsection (1) is issued, the police officer concerned shall, as soon as practicable, report the issue of the authority, the grounds on which it was issued and the result of any search made under it to a magistrate.
- (3) Where anything is seized in pursuance of the powers conferred by subsection (1) the officer seizing the thing shall issue a receipt acknowledging the seizure of that thing, being the signature of the owner or occupier of the premises or his near relative or other person for the time being in possession or control of the premises, and the signature of witnesses to the search, if any.”

¹² Section 40 of the CPA: “A search warrant may be issued and executed on any day (including Sunday) and may be executed between the hours of sunrise and sunset but the court may, upon application by a police officer or other person to whom it is addressed, permit him to execute it at any hour.”

warrant or order can be carried out by a police officer in an emergency and whatever item found can be seized if the police officer concerned believes on reasonable grounds that it is necessary to do so in order to prevent the loss or destruction of anything connected with an offence. The search or entry must have necessarily been made under circumstances of such seriousness and urgency as to require and justify immediate search or entry without warrant.¹³ The Court of Appeal's decisions in, for instance, *Moses Mwakasindile v. Republic*,¹⁴ (unreported); and *Seleman Nassoro Mpeli v. Republic*¹⁵, (unreported) are illustrative in this respect¹⁶

4.0 Execution of Searches and Seizures - Practical Issues

On the basis of the majority of decided cases, there have been fewer discernible issues on legality of searches and seizures effected in circumstances of emergency where the executing officers could not seek and obtain search orders or warrants. Most such cases have involved at least two scenarios: **one**, where suspects are arrested aboard motor vehicles or riding motorcycles after being intercepted on a road by law enforcement agents who received information on the alleged wrongdoing while they were on patrol

¹³ Section 42 (1) of the CPA enacts as follows:

"42.-(1) A police officer may-

- (a) search a person suspected by him to be carrying anything concerned with an offence; or
- (b) enter upon any land, or into any premises, vessel or vehicle, on or in which he believes on reasonable grounds that anything connected with an offence is situated, and may seize any such thing that he finds in the course of that search, or upon the land or in the premises, vessel or vehicle as the case may be—
- (i) if the police officer believes on reasonable grounds that it is necessary to do so in order to prevent the loss or destruction of anything connected with an offence; and
- (ii) the search or entry is made under circumstances of such seriousness and urgency as to require and justify immediate search or entry without the authority of an order of a court or of a warrant issued under this Part."

¹⁴ Criminal Appeal No. 15 of 2017 (unreported)

¹⁵ Criminal Appeal No. 3 of 2018 (unreported)

¹⁶ The letter and spirit of sections 38,40 and 42 of the CPA appears to have been captured by the Police General Order No. 226 of the PGOs made by the Inspector General of Police in exercise of his powers under section 7 (2) of the Police Force Auxiliary Services Act, Cap. 322 of the Revised Edition, 2002. The current edition of the PGOs became effective on 26th March, 2021 vide Government Notice No. 315 of 2021.

- see, for instance, *Moses Mwakasindile (supra)*; *Seleman Nassoro Mpeli (supra)*; *Issa Hassan Uki v. Republic*¹⁷; *Emmanuel Lyabonga v. Republic*¹⁸; *Ernest Jackson @ Mwandikaupesi & Another v. Republic*¹⁹; and *Ex. G.2434 PC. George v. Republic*²⁰.

Two, cases where suspects are arrested at ports of embarkation or disembarkation (such as border posts, airports or seaports) - see, for instance, *Song Lei v. Director of Public Prosecutions*²¹; *Vuyo Jack v. Director of Public Prosecutions*²²; *Marceline Koivogui v. Republic*²³; and *Khamis Said Bakari v. Republic*²⁴.

The same cannot be said of cases involving entry into and a search of a dwelling house, conveyance or place where prior information of alleged criminal wrongdoing was received by the law enforcement officers in circumstances negating any probable claim of emergency. It is arguable that in these circumstances, the requirement under section 38 of the CPA ought to have been complied with.

The Court of Appeal as well as the High Court have held in a number of their decisions that a search executed by a police officer other than an OCS without any warrant or search order in circumstances negating the probable claim of emergency is worthless-see, for instance, *Shabani Said Kindamba (supra)*; *Director of Public Prosecutions v. Doreen John Mlemba*, Criminal Appeal No. 359 of 2019; and *Ayubu Mfaume Kiboko & Another v. Republic*, Criminal Appeal No. 694 of 2020 (both unreported). See also the decisions of the High Court in *Rose John v. Republic*, DC Economic Appeal No. 1 of 2020, HC at

¹⁷ Criminal Appeal No. 129 of 2017 (unreported)

¹⁸ Criminal Appeal No. 257 of 2019 (unreported)

¹⁹ Criminal Appeal No. 408 of 2019 (unreported)

²⁰ Criminal Appeal No. 8 of 2018 (unreported)

²¹ Consolidated Criminal Appeals No. 16A of 2016 and 16 of 2017 (unreported)

²² Criminal Appeal No. 334 of 2016 (unreported)

²³ Criminal Appeal No. 469 of 2017 (unreported)

²⁴ Criminal Appeal No. 359 of 2017 (unreported)

Kigoma; and *Jadili s/o Muhumbi & Another v. Republic*, Economic Criminal Appeal No. 4 of 2020, HC at Kigoma (both unreported).

Recently, in the case of *Director of Public Prosecutions v. Mussa Hatibu Sembe*, Criminal Appeal No. 130 of 2021 (unreported) stressed the importance of the presence of an independent witness in course of execution of a search so as to assure of the credibility of the exercise. In that case, the Court distinguished its earlier decision in *Jibril Okash Ahmed v. Republic*, Criminal Appeal No. 331 of 2017 (unreported) where it had accepted the signatures of two police officers as witnesses to the search of an intercepted motor vehicle that led to the recovery of suspected narcotic drugs since the circumstances were such that an independent witness could not be procured. Inversely, in *Mussa Hatibu Sembe (supra)* the search was executed in daytime at a bus stand, usually a very busy place, rendering it highly improbable that the executing officer could not have enlisted the presence of a local leader, a passenger or any other bystander. The Court took the view that it was inexorable that the learned trial Judge discounted the presence of the two police officers, who, as part of the arresting police contingent, were neither impartial nor credible in the search and seizure exercise.²⁵ See also the Court of Appeal's decision in *Malik Hassan Suleiman v. SMZ* [2005] TLR 236.²⁶

In *Frank Michael alias Msangi v. Republic*, Criminal Appeal No. 323 of 2013 (unreported), the Court of Appeal stressed that independent witnesses must be fully involved in the search. In that case, the Court took the view

that the search in issue was invalid and unreliable because the owner of the house and the civilian witnesses who were lined up to witness the search did not accompany the executing police officer (PW6) when he walked back into the house to discover the black bag. It was beyond question that the civilian witnesses were not engaged in the search on the ceiling roof, which was, apparently, an exercise conducted exclusively by the police. In the premises, the Court could not rule out the possibility that the contents of the black bag might have been deceptively planted.

In some occasions, the prosecution failed to produce at the trial any certificate or receipt acknowledging seizure of items following a search. Failure by the executing officer to issue a certificate of seizure is contrary to the mandatory requirement under section 38 (3) of the CPA. In a number of decisions of the Court of Appeal, such failure has been held to be fatal to the prosecution case: see, for instance, *Selemani Abdallah & Others v. Republic*, Criminal Appeal No. 354 of 2008; *Ngosha Gamba © Dewita v. Republic*, Criminal Appeal No. 54 of 2022; *Daniel Matiku v. Republic*, Criminal Appeal No. 450 of 2016; *Omary Idd Mbezi and Six Others v. Republic*, Criminal Appeal No. 214 of 2017 and *Ndima Kashinje © Joseph v. Republic*, Criminal Appeal No. 446 of 2017 (all unreported).²⁷ The Court observed in *Selemani Abdallah (supra)*, as it explicated the rationale for issuance of the receipt, thus:

“The whole purpose of issuing receipt to the seized items and obtaining signature of the witnesses is to make sure that the property seized came from no place other than the one shown therein. If the procedure is observed or followed, the

²⁷ See also *Jumanne Mpini @ Kambilombilo & Another v. Republic*, Criminal Appeal No. 195 of 2020 (unreported).

²⁵ It seems settled that any search of building, vessel, carriage, box, receptacle or place would require the presence of an independent witness unless it is executed as an emergency. Such a condition would arguably not apply to a search on a person following his arrest.

²⁶ In *Malik Hassani Suleiman (supra)* the Court of Appeal held a search irregular and invalid for being witnessed, and the list (certificate) of the items seized in the search being signed, by only one inhabitant of the locality instead of two contrary to the dictates of section 114 (1) and (2) of the Criminal Procedure Decree, Chapter 14 of the Laws of Zanzibar.

complaints normally expressed by suspects that the evidence arising from such search is fabricated will to a great extent be minimized.”

In *Daniel Matiku (supra)*, the Court was uncompromising that:

“If this mandatory requirement had been complied with, of necessity, what was retrieved from the appellant would have been listed and the appellant and independent witnesses would have appended their signatures and each retained a copy of the certificate of seizure so as to put in motion a foolproof chain of custody. However, this was not the case and in the absence of the certificate of search and seizure the prosecution fell short of establishing beyond any doubt as to what was actually retrieved and seized from the appellant in order to link him with the robbery in question.”

In *Ngosha Gamba (supra)*, the Court of Appeal observed that the absence of the certificate of seizure in that case was heightened by the prosecution’s failure to produce as a prosecution witness the OCS who, having been called to the scene of the crime by PW2, seized the allegedly stolen motorcycle from the suspect but did not issue any certificate of seizure. The unexplained absence of the OCS was held to have adversely affected the prosecution case.

At this point, it should be observed that, unlike the WCA and the FA, the DCEA anticipates that on some occasions evidence against a suspect could be collected in contravention of its provisions or those of the CPA. In that regard, section 48 (4) stipulates that where

any objection is taken to the admission of evidence on the ground that the evidence was obtained in contravention of the provisions of the Act or any other written law including the CPA, “the court shall admit the evidence” but it may decline doing so, “having regard to all circumstances including the circumstances in which the evidence was obtained, if it is satisfied that the admission of the evidence would have such an overwhelming adverse effect on the fairness of the proceedings ...”

Although the aforesaid provision is yet to be specifically tested and construed in the jurisprudence of the Court of Appeal, it certainly mirrors the letter and spirit of section 169 (1) and (2) of the CPA, which has been discussed and interpreted in a number of cases - see, for instance, *Nyerere Nyague v. Republic*, Criminal Appeal No. 67 of 2010 (unreported), which is authority for the principle that illegally obtained evidence may be received in evidence after observing the requirements provided by section 169 (1) and (2) of the CPA and that an objection to admissibility of illegally obtained evidence must be made at the trial so as to trigger the application of the procedure under the aforesaid provisions.²⁸ See also *Abas Kondo Gede v. Republic*, Criminal Appeal No. 472 of 2017; and *Joseph Charles Bundala v. Republic*, Criminal Appeal No. 15 of 2020 (both unreported).

²⁸ In *Nyerere Nyague*, the Court held that: “It follows in our view therefore that the admission of evidence obtained in the alleged contravention of the CPA is in the absolute discretion of the trial court and that before admitting or rejecting such evidence, the parties must contest it, and the trial court must show that it took into account all the necessary matters into consideration and is satisfied that, if it admits it, it would be for the benefit of public interest and the accused’s rights and freedom are not unduly prejudiced. In other words there must be a delicate balancing of the interests of the public and those of the accused. It is not therefore correct to take that every apparent contravention of the provisions of the CPA automatically leads to the exclusion of the evidence in question. The decision of the trial court on such matters can only be faulted if it can be shown, that the admission or rejection of such evidence was objected to and that it did not properly exercise its judicial discretion, or at all, in rejecting or admitting it.”

5.0 Concluding Remarks

In view of the application of the provisions of the WCA and the FA *in tandem* with those of the CPA as discussed, it is certain that all law enforcement agents exercising the powers of search and seizure under the WCA and the FA will invariably have to consult and cooperate with other relevant authorities. Such authorities would include the courts, the Police Force, the Immigration Services Department, the Tanzania Revenue Authority, etc.

There is an apparent disparity particularly between the lofty intention of the legislature in passing the WCA so as to vest the authorized officers-with, *inter alia*, adequate search and seizure powers but that the said powers invariably have to be exercised through the conduit of the OCS in terms of section 38 of the CPA unless it is an emergency case where such authorized officers can act and exercise their powers without let or hindrance. Arguably, in such cases, the authorized officers cannot act lawfully in effecting a

search and seizure unless they cooperate with the relevant OCS who would then execute the search himself or issue a search order for the officers to carry out the intended search.

In any case, however, the critical issue is for all law enforcement agencies in the country to inculcate ethos within their ranks of officers to obey and enforce the law as it is. There is no denying that the law does not give law enforcement agents unfettered discretion to conduct searches wholesale. There should not be a place in our law enforcement agencies for erring officers who deliberately or negligently disregard the procedure in executing searches and seizures.

The ultimate success of any prosecution depends on how potential legal hurdles and vicissitudes are surmounted at the earliest stages of arrest, investigation, search and seizure. This position holds true notwithstanding the existence of the “safety value” provided by section 48 (4) of the DCEA and section 169 (1) and (2) of the CPA briefly discussed earlier.