



FORM & CONTENTS OF A PROPER CHARGE

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FOREWORDS

This handbook will assist criminal law practitioners, be it defence counsels, State Attorneys, Public Prosecutors, Honorable Judges, Honorable Magistrates, law enforcement officers as well as law students to know what a proper charge according to law should be. As to other aspects in criminal law, suspects sometimes are acquitted not because they did not commit the alleged offence but because the charge against them was defective. After reading this book, State Attorneys will know what to do in a charge and when a need for amendment may arise.

The handbook is also useful for appeal cases since some defectiveness of a charge may decide the life of the whole appeal. I have included a good number of current Court of Appeal precedents to update the reader on appropriate legal positions, and it is my hope that it will be useful in administration of justice in Tanzania.



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I first and foremost give thanks to the Almighty God, the creator of heaven and earth, the Savior of the world, “***in him my life is anchored, and in him alone there’s no failure!***”

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PART ONE

“A CHARGE”

1.1 Meaning of a “charge”

A charge can be defined as a written statement of complaint brought against an accused person in a court of law.¹ In subordinate courts it is referred to as a “**charge**” while in the High Court, an “**information**”.

1.2 Alternative charge

An alternative charge is an additional count laid against the accused in the same charge, in circumstances where available evidence suggests to prove more than one offence, and the prosecutor is not certain which of them the evidence will prove in exclusion of the others.² To remedy such situation, the prosecutor indicates both counts in the same charge so that should the evidence fail to prove the main count, it will do so to the alternative.³

It should however be noted that, a conviction on the alternative count can only be entered if the prosecution fails to prove the main count; but if the main count is proved, the alternative becomes irrelevant. When the court decides to convict an accused person under this type of a charge, it must make a choice on one of them and no finding is to be made on the other. The

1 Kigen ARap Chemoiwa v R (1962) E.A 684, Momanyi Bwonwong’a, Procedures in Criminal law in Kenya, Nairobi: East African Educational Publishers, 1994

2 Momanyi Bwonwong’a(supra)pg 96

3 Wainaina v R [1973] EA 182



Court cannot convict on both, the main and alternative counts. The accused may however be acquitted on both if the prosecution fails to prove either of them.⁴

1.3 Contents of a charge

The Golden Rule entails that, a charge must disclose the offence by indicating **a statement of the specific offence** or offences with which the accused person is charged, together with such **particulars as may be necessary** for giving reasonable information as to the nature of the offence charged.⁵

Fair trial demands an accused person to be charged with an offence known to law and in a concise, clear enough and unambiguous manner, to enable him to understand and plead thereto from a point of knowledge. The essence of this is to enable him to prepare not only for defence but also areas to cross-examine prosecution witnesses.⁶

4 Derick Alphonse and Another vs Republic, Criminal Appeal No. 23 of 2015 CAT Mbeya (unreported), pg.17, Republic v Nasa Ginners Ltd [1955] 22 EACA 434, Seifu Bakari v R [1960] E.A 388(C.A)

5 Jackson Venant v R Criminal Appeal No. 118 of 2018 CAT Bukoba (unreported), Section 132 of the CPA

6 Mussa Mwaikunda v Republic [2006] TLR 387, Kassim Mohamed Selemani vs R, Criminal Appeal No.157 of 2017 CAT Mtwara (unreported), Angulile Jackson@Kasonya vs. DPP, Criminal Appeal No. 162 of 2019 CAT (unreported)



PART TWO

FRAMING a charge

2.1 Mode of framing a charge

Descriptively, a charge may be framed to contain the following:-⁷

- (i) **The Heading.** This contains the name of the Court where the charge is to be instituted, a statement indicating the type of the case (criminal), a space to indicate case number, names of the parties to the case and a sub-heading of the word “**CHARGE**”.
- (ii) **Statement of offence.** This part contains the specific name of the offence known to law with which the accused person is charged, and a reference to specific section of the law creating the offence (*as well as its specific subsections where applicable*).

This part serves to describe the offence shortly in ordinary language avoiding as far as possible the use of technical terms and without necessarily stating all the essential elements of the offence.⁸

- (iii) **Particulars of the offence.** This part gives a reasonable information on who, when, where, what, and to whom (where applicable) the offence was committed.⁹

⁷ Section 135 of the CPA

⁸ section 132 and 135(a) (ii) of the CPA

⁹ Republic v Loibori [1949]16 E.A.C.A. 86



The said five **Ws** can be demonstrated as follows:-

- (1) **W.....WHO.....**name of the accused.
- (2) **W.....WHEN.....**date,month and year.
- (3) **W.....WHERE.....**the area, District and Region the offence was committed;
- (4) **W.....WHAT.....**what crime has been committed by the accused?
- (5) **W.....WHOM.....**to whom the offence was committed (*where applicable as it may not apply to all cases*).

(iv) **Date of filing/institution** of the charge.

(v) **Space for the name and signature of the prosecutor who files/institutes it.** The rationale is to identify the person who filed it in court as only people who have capacity to do prosecute that particular case can do so. Only the DPP or persons working under his authority have such capacity to institute and prosecute or if it is a private prosecutor, he must comply with what entails to be a private prosecutor.¹⁰

¹⁰ Section 97 and 99 of the CPA



- (vi) **Space for the date and signature** of the Court Registry Officer who received it for filing.

2.2 Alteration of a charge

This may be done either by way of amendments or substitutions of charge under **section 234 of the CPA**.

Where at any stage of a trial it appears to the court that the charge is defective, either in substance or form, the court may make such order for alteration of the charge either by way of amendment of the charge or by substitution or addition of a new charge as the court thinks necessary to meet the circumstances of the case, unless having regard to the merits of the case, the required amendments cannot be made without injustice.¹¹

The prosecutor may make a prayer to the Court, or the Court *suo mottu* may order alteration after having noticed the defects.¹²

2.3 Plea on an altered charge (essentials)

Subject to *subsection (1) of section 234 of the CPA*, where the court permits amendment or substitution of the charge, the following things are to be considered;

11 Director of Public Prosecutions vs Lawretta ani chioma and 3 others vs Republic, Criminal Appeal No.540 of 2017 CAT DSM (unreported), Mande Manyanya vs Republic, Criminal Appeal No.55 of 2017 CAT Tabora (unreported), Remmy Gerald Sipuka vs Republic, Criminal Appeal No.67 of 2019 CAT DSM (unreported), Kali kulwa@nyangaka vs Republic, Criminal Appeal No. 6 of 2019 CAT Mbeya (unreported), Hassan Said Twalibu vs The Republic, Criminal Appeal No. 91 of 2019, CAT Mtwara (unreported).

12 Michael Luhiyo vs Rep, (1994) TLR 181, and Kobelo Mwaha vs Republic, Criminal Appeal No. 173 of 2008 (unreported)



- (1) The accused must be called to plead to a new or amended charge. The new charge shall be read over to him and a reply thereto recorded.¹³
- (2) The Magistrate must inform the accused person of the rights to recall witnesses who had already testified before the amendment or substitution, to give their evidence afresh or be further cross-examined by him or his advocate. And in case he cross-examines them, the prosecution shall have the right to re-examine any such witness on matters arising out of such further cross-examination.¹⁴
- (3) The court may permit the prosecution to recall and examine, with reference to any alteration of or addition to the charge that may be allowed, any witness who may have been examined unless the court for any reason to be recorded in writing considers that the application is made for the purpose of vexation, delay or for defeating the ends of justice.¹⁵

In ***Njuguna v R***,¹⁶ it was stated that the right of the accused to hear witnesses give evidence afresh is a basic right going to the root of a fair trial.

¹³ Thuway Akonaay VRepublic 1987 TLR 92, CAT

¹⁴ Section 234 of the CPA, Ramadhani Abdallah v Republic [2002] TLR 45 CA, Joseph Masaganya vs Republic, Cr.Apl.No. 77/2009, CAT Tabora (unreported)

¹⁵ Section 234(2)(c) of the CPA

¹⁶ *Njuguna v R* [2007] 2 EA 370



Not only should the accused be informed of that right but also, his answer should be recorded in response to that information.

It should be noted that, it is mandatory to afford the accused the right to plead to the amended charge. However, with regards to the right to recall witnesses, omission to do so may not be fatal especially if the amendment did not substantially affect the validity of the available evidence. Under such situations, the accused cannot say he has been prejudiced since the substance of the evidence has not been affected.¹⁷ However, this is not a ticket to omit informing the accused of such right.

¹⁷ **John Kihombo vs Republic**, Criminal Appeal NO.437 of 2019 CAT (unreported), **Samwei Paul v. Republic**, Criminal Appeal No. 312 of 2018 (unreported), **Issa Reji Mafita v. Republic**, Criminal Appeal No. 332 'B' of 2020 (unreported),



PART THREE

DEFECTIVE CHARGE

3.1 What is a defective charge?

A defective charge is one which is not in conformity to law. Prosecuting on a defective charge ends it up unproved. Generally, a defective charge prejudices the accused person's right to appreciate the offences facing him; hence that contravenes the basic principle of fair trial.¹⁸

It is trite law that, in case any defect in the charge is discovered in the course of the trial, it is the duty of the prosecutor to apply to court for amendment under section 234(1) of the CPA. The court as well, *suo mottu*, upon discovery of any defect at any time along the trial process, may order for amendment of that particular charge. As aforesaid, once that is done, it is mandatory for the amended charge to be read over to the accused for him to plead. Failure to have the accused person plead to the amended charge is incurably fatal.¹⁹

3.2 Remedies for a defective charge

Although it is also the responsibility of the court to order amendment of the charge, the Prosecutor is duty bound to review his case file constantly along the trial process in order to ensure that it tallies with the evidence adduced by witnesses.

¹⁸ See Juma Makoye Juma vs R Criminal Appeal No.285 of 2016 CAT Tabora (unreported) pg.9.

¹⁹ Vitalis Joseph vs Republic, Criminal Appeal No.384 of 2021 CAT (unreported) pg.11



Sometimes the way a charge was drafted in the beginning may vary with the evidence adduced later hence the need for amendment.²⁰

The following are remedies available when a charge is defective;

- (i) The magistrate may reject its admission *ab initio*.²¹
- (ii) Amendment or substitution. ²²
- (iii) *Nolle prosequi* by the DPP or State Attorneys with an option to re-institute.²³
- (iv) Withdrawal by Public Prosecutors under section 98(a) with an option to re-institute.
- (v) Dismissal by court during ruling of a case to answer or during judgment.

3.3 What makes a charge Defective

Generally, as was stated in ***Ngidipe Bin Kapirama & Others***²⁴, an illegality in the form of a charge, or information may be cured as long as the accused person has not been prejudiced or embarrassed in his defence or there has otherwise been a failure of justice (*each case to be determined upon its own peculiar circumstances*).

²⁰ Pirbaksh Asharaf & 10 others vs R Criminal Appeal No.345 of 2017 CAT Dodoma (unreported) pg 11

²¹ Section 129 of the CPA.

²² Section 234 of the CPA, Michael Luhiyo vs Rep, (1994) TLR 181, and Kobelo Mwaha vs Republic, Criminal Appeal No. 173 of 2008 (unreported)

²³ Section 91(1) of the CPA

²⁴ R v. Ngidipe Bin Kapirama & Others (1939) 6 EACA



Some defectiveness of the charge may be curable while some may not be so based on the aforementioned test.

The following are circumstances which may render a charge defective;

(i) Duplicity

A charge is said to be duplex if it contains two distinct offences in a single count.²⁵

Two or more offences originating from the same transaction may be charged in the same charge but not in a single count. Only one offence should be charged in a count. A charge containing more than one offence in a single count is bad for duplicity and does not put the accused in a position to fully understand which of the two offences in a count he is required to answer, hence that is prejudicial to him.²⁶

In ***Republic v Mongella***²⁷ for instance, the accused was alleged to have killed six persons; the prosecutor cumulated all six distinct deaths in a single count. The court stated that, each offence representing independent deaths of the six deceased persons should have been put in separate counts.

²⁵ Lusajo Jamson Mwasambungu & another vs Republic, Criminal Appeal No.95 of 2021 CAT Dodoma (unreported) pg.11

²⁶ Stanley Murith Mwaura vs Republic, Criminal Appeal No.144 of 2019 CAT DSM (unreported), Director of Public Prosecutions v Pirbaksh and 10 others, Criminal Appeal No.345 of 2017 CAT Tabora (unreported), Kulwa Moses v Republic, Criminal Appeal No.491 of 2015 CAT Dodoma (unreported), Diaka Brama and another vs. Republic, Criminal Appeal No. 211 of 2017 CAT Dodoma (unreported), Raymond Mwinuka vs. Republic, Criminal Appeal No. 366 of 2017 CAT Dodoma (unreported), Simon Kitalika and others vs Republic, Criminal Appeal No.468 of 2016 CAT (unreported)

²⁷ Republic v Mongella [1934] 1 E.A.C.A.152, Faustine Magadula v Republic [2004] TLR 98 CA



Sometimes, the provisions creating distinct offences if lumped together in one count may render a charge duplex as well.²⁸

In **Lusajo Jamson Mwasambungu**,²⁹ the charge indicated the offence of “*conspiracy to commit offences of uttering a false document and obtaining money by false pretence*”. Those are two separate offences which cannot be framed in the same count. The Court of Appeal held that such anomaly rendered the charge to be bad for duplicity.

However, as aforesaid, in determining whether the defect is fatal and incurable, the test is whether the charge under consideration embarrassed or prejudiced the accused such that he could not arrange for a focused and proper defence. In other words, the fatality of any irregularity is dependent upon whether or not it occasioned a miscarriage of justice.³⁰

(ii) Essence of the rule against duplicity

This is a common law rule which discourages the prosecution to join two or more separate offences in a single count and generally it serves the purpose of ensuring that both the accused and the court appreciate the allegation the subject matter of the case. Its importance can be explained as follows;

28 Pirbaksh Asharaf & 10 others vs R Criminal Appeal No.345 of 2017 CAT Dodoma (unreported) pg9, Director of Public Prosecutions vs Morgan Mariki and Another, Criminal Appeal No. 133 of 2013 CAT (unreported), Kauto Ally vs Republic [1985] TLR 183

29 Lusajo Jamson Mwasambungu & another vs Republic, Criminal Appeal No.95 of 2021 CAT Dodoma (unreported),

30 Republic v. Mongela Ngui [1934] EACA, Lusajo Jamson Mwasambungu & another vs Republic, Criminal Appeal No.95 of 2021 CAT Dodoma (unreported)



- (a) As a matter of fair trial, a person charged with a criminal offence is entitled to know the specific offence he is alleged to commit so that he can prepare and present a defence or decide to plead guilty. Joining two or more separate offences in a single count prejudices him to know which out of those offences in a count he should prepare defence or plead guilty.
- (b) The trial court is entitled to fully know the exactly and specific allegation in the case, in order to control proceedings and decide the case. Lumping of separate offences in a single count cannot be said to have fully informed the court about the specific allegation. One would ask, in case the accused is found guilty, which of those several offences in a count should the court convict and sentence the accused?

Some offences may carry different weights of sentences and the court cannot pronounce several sentences out of a single count.

(iii) Wrong or non-existing provision

As a general rule, a charge containing a wrong or non-existing provision of law is bad in law and is likely not to prove the offence. Charging or convicting an accused person on such type of a charge places him in a position not to understand the type and nature of the offence he is facing and how he can prepare for defence or cross-examine his opponent witnesses. However, if circumstances show that the accused fully understood the allegation facing him to the extent of not being



prejudiced in any way, the defect may be curable under section 388 of the CPA. The good example is like where the shortfalls are remedied by the particulars of the offence enabling him to understand the case.³¹

(iv) Statement of Offence which is not specific

Pursuant to **section 132 of the CPA**, a charge shall be sufficient if it contains a statement of the “**specific offence or offences**” with which the accused person is charged, together with such particulars as may be necessary for giving reasonable information as to the nature of the offence charged. The word “*specific*” is the opposite of “*general*”.

Sometimes a section of law may have several subsections each with distinct offences carrying different sentences. Indicating such section in general without specifying which subsection among them the accused person is charged, places him in ambiguity. A generalized statement of offence may not direct the accused person to the specific elements creating the offence, especially where the section carries several subsections as aforesaid.

Fair trial requires the accused to fully be informed about the law creating the offence he stands charged, and to achieve that, the charge must point out to the specific provision of law alleged to be infringed.

31 Jumanne Mondelo vs Republic, Criminal Appeal No.10 of 2018 CAT DSM (unreported), Abdallah Nguchika vs Republic, Criminal Appeal No.182 of 2018 CAT DSM (unreported), Halfan Ndubashe vs R, Criminal Appeal No. 493 of 2017 CAT Tabora (unreported),



However, as stated above, some defectiveness may be curable if circumstances show that the accused understood the nature of the case or if the ambiguity has been cured by the particulars of the offence.³²

(v) Incriminating & punishment sections

Generally, as a matter of fair trial, it is necessary for a charge to indicate both incriminating and punishment sections if they appear in different sections. The rationale is to enable the accused to fully understand the nature of the case facing him. The “*nature of the case*” includes the type and seriousness of the sentence he might face if convicted. Failure to indicate punishment section in a charge is what makes the trial unfair for want of disclosure of the seriousness of the sentence, although in most cases it is curable under section 388 of the CPA if circumstances show that he understood the case and could not be prejudiced.³³

The position under **section 135(a) (ii) of the CPA** stresses the peremptory requirement that the “*statement of offence*” in every charge must describe the offence concerned in ordinary language and if the offence charged is one created by enactment, it must contain a “reference to the section of the enactment creating

32 Jumanne Mondelo vs Republic, Criminal Appeal No.10 of 2018 CAT DSM (unreported), Alex Medard vs R Criminal Appeal No.571 of 2017 CAT Bukoba (unreported) pg.9,10&11, Meshaki Malongo @ Kitachangwa vs Republic, Criminal Appeal No. 302 of 2016 CAT Arusha (unreported) pg.9, Chenga Nyamahanga vs R Criminal Appeal No.122 of 2016 CAT (unreported) pg.13, Joseph Marando Ikanda vs R Criminal Appeal No. 555 of 2015 CAT (unreported) pg.9 and Issa Charles v R Criminal Appeal No.234 of 2016 CAT (unreported) pg.5&6. In the case of Josephat Shongo v Republic, Criminal Appeal No. 62 of 2012 CAT (unreported) pg.7, 8&9

33 Cosma Nyadago v R (1955) 22 EACA 450 (CA), Abdul Mohamed Namwaga Madodo vs Republic, Criminal Appeal No.257 of 2020 CAT Mtwara (unreported) pg 11



the offence”. **There is no mention of a requirement to indicate a “punishment provision”.** Therefore, omission to cite punishment section is not fatal per se, especially where the accused person was not prejudiced by it.³⁴

(vi) Essential elements in particulars

After indicating a reference of the infringed section of law in the statement of offence as per *section 135(a) (ii) of the CPA*, what follows is the particulars of the offence explaining elements of the offence charged. Elements of the offence in the particulars are to be explained clearly in a language the accused understands, giving him reasonable information to know the nature of the case he is facing. Failure to disclose essential elements of the offence in the particulars makes the charge defective, although in some cases it may be cured by the evidence adduced.³⁵

34 Abdul Mohamed Namwaga Madodo vs Republic, Criminal Appeal No.257 of 2020 CAT Mtwara (unreported)pg 11, Godfrey Simon and another vs Republic, Criminal Appeal No.296 of 2018 CAT Arusha (unreported), JAFARI Salum @Kikoti vs Republic, Criminal Appeal No.370 of 2017 CAT Dar Es Salaam (unreported), Elisha Mussa vs Republic Criminal Appeal No.282 of 2016 CAT Dar Es Salaam (unreported)

35 Damian Luhele vs Republic, Criminal Appeal No.501 of 2007 CAT Mwanza (unreported), Masalu kayeye vs Republic, Criminal Appeal No.120 of 2017 CAT Mwanza (unreported), Hamis Mohamed Mtou vs Republic, Criminal Appeal No.228 of 2019 CAT DSM (unreported), Francis Paul vs Republic Criminal Appeal No.228 of 2019 CAT Arusha (unreported), George Senga Musa vs. Republic, Criminal Appeal No. 108 of 2018 CAT Arusha (unreported), Noah Paulo Gonde and another vs Republic, Criminal Appeal No.456 of 2017 CAT Mbeya (unreported)



(vii) Place of commission of the offence

As demonstrated earlier on the need to observe the five “**Ws**” rule during framing of a charge, one of those “**Ws**” represents the place *where* the offence was committed. Failure to indicate clearly in the particulars of offence the place where the offence was committed renders the charge defective as it limits the extent of the accused’s defence, and in particular, defence of alibi and objections as to the jurisdictions of the court, to mention a few.³⁶

(viii) Variance between date & evidence

As a general rule, variance between the date and evidence renders the charge defective and may prejudice the accused’s preparation for defence which includes defence of alibi (*may be on that particular date he was at another place*). The rationale is that, when a specific date of the commission of offence is mentioned in the charge, the accused prepares and builds his defence based on that specified date. Now when a witness comes to mention a different date, it means he is not proving that which is indicated in a charge.³⁷

36 Shaban haruna@Dr Mwangilo vs Republic, Criminal Appeal No.396B of 2017 CAT (unreported), Magobo Njige Republic vs. Republic, Criminal Appeal No. 442 of 2017 CAT (unreported), Jonathan George Njamas vs R Criminal Appeal No.421 of 2016 CAT (unreported) pg.9, Noel Gurth@Bainth & Another Versus Republic, Criminal Appeal No. 339 of 2013 (unreported) and Kandola Paulo Kadala vs R Criminal Appeal No. 61 of 2016 CAT (unreported) pg.7 and Mabula Limbe v R Criminal Appeal NO.563 of 2015 CAT (unreported) pg.5&6

37 Jafari Ndabita @ NKolanigwa vs Republic, Criminal Appeal NO.270 of 2016 CAT (unreported) pg.8



Sometimes the charge may indicate that the offence was committed on a particular date, but witnesses come to testify that it was committed on a different date. Since the accused person will be on denial of that charge, it cannot be said to have been proved. However, variation of time under *section 234(3)* of the CPA is not fatal.³⁸

Besides that, there are circumstances which may indicate a slip of the pen made by the trial court or where two sets of witnesses in the same trial mention two different dates, some indicating the date appearing in the charge while others indicating a different one. Depending on circumstances of each case, the defectiveness may be curable as the court thinks so by assigning reasons.³⁹

(ix) Element of threat in armed robbery

One of the essential elements of armed robbery is “**the use or threat to use violence against any person**” in order to obtain or retain the stolen property. This offence cannot stand without indicating the person to whom such threat was directed because that is what makes the elements establishing the offence. Furthermore, that person purported to have been threatened must be called to testify in court in order to explain the nature of the weapon and the threat which was used.

³⁸ Augustino Samson v Republic, Criminal Appeal No. 254 of 2014, CAT Mbeya (unreported)

³⁹ Said Majaliwa vs Republic, Criminal Appeal No.02 of 2020 CAT (unreported)



However, even in armed robbery offences, where such omission does not prejudice the accused person to fully appreciate the charge, it may be curable under **s. 388 of the CPA**.⁴⁰

(x) Ingredients of offence vs evidence

Ingredients/Elements of the offence charged are expected to be explained in the particulars of the charge. If such elements differ from what witnesses adduce, the charge is said to be variable and requires amendment under section 234 of the CPA.

This is because; the primary purpose of procuring witnesses in a criminal case is to adduce evidence which prove the charge. So, if witnesses make a different narration of story other than that which establishes such elements, that charge is variable and will remain unproved.⁴¹

(xi) Charging on a repealed law

Generally, the law requires framing of a charge to be in line with existing laws. To achieve that, prosecutors and the court are required to update themselves on current positions of law and avoid citing repealed laws or admitting a charge which is under such status.

⁴⁰ Peter Marco @ John v Republic, Criminal Appeal No. 258 of 2017 CAT Tabora (unreported), David Matiku Kitanita & 3 others vs Republic, Criminal Appeal No. 203 of 2016 CAT (unreported) pg. 8&9, Juma Ismail & Another vs Republic, Criminal Appeal No.501 of 2015 CAT (unreported) pg.4, and Mustapher Songambele vs R Criminal Appeal No.321 of 2015 CAT (unreported) pg.7&8,

⁴¹ In Justine Kakuru Kasusura@John Laizer vs Republic, Criminal Appeal No. 175 of 2010 (unreported) and Kandola Paulo Kadala vs R Criminal Appeal No. 61 of 2016 CAT (unreported) pg.7



As a general rule, charging an accused person on a repealed law makes the charge defective and vitiates the trial.⁴²

However, there are circumstances, each case to be decided upon its own peculiar environments, where such irregularity may be curable if the repealed section is re-enacted in identical words (in *pari material*) with the current one, such that it cannot be said the accused has in any way been prejudiced.⁴³

(xii) Conspiracy together with actual offences

It is wrong in law to include in the same charge, an offence of conspiracy together with its actual offence, if that actual offence so conspired was fulfilled.⁴⁴ Conspiracy can stand alone especially where the actual offence purported to have been conspired was not committed.

(xiii) Charge with improper jurisdiction

A charge must be instituted in a competent court vested with power of jurisdiction. Framing it with a

⁴² Ernest Jackson @ Mwandikaupesi and another vs Republic, Criminal Appeal No.408 of 2019 CAT DSM (unreported), Thomas Lugumba @ Chacha vs. republic, Criminal Appeal No.400 of 2017 CAT Mwanza (unreported), Renatus Athanas @Kasongo vs. DPP, Criminal Appeal No. 310 of 2019 CAT Mbeya (unreported), See R v Tuttle (1929) 45 TLR 357 and Matu Gichumu v R (1951) EACA 311.

⁴³ ibid

⁴⁴ Lusajo Jamson Mwasambungu & another vs Republic, Criminal Appeal No.95 of 2021 CAT Dodoma (unreported), Emmanuel Magembe and 3 others v Republic, criminal Appeal No.35 of 018 CAT Shinyanga (unreported), Magobo Njige & Another v. Rep, Cr.Appeal No. 442 of 2017 (unreported), Steven Salvatory v. Republic, Cr. Appeal No. 275 of 2018 CAT Mtwara (unreported), John Paulo Shida v. Republic, Cri. Appeal No. 335 of 2009, Hassan Idd and another v Republic, Criminal Appeal No.324 CAT Mbeya (unreported)



wrong jurisdiction makes it defective. Jurisdiction may vary due to the subject matter, level of the Court and geographical area where the offence was committed. Instituting a charge or adjudicating a case in a court with no jurisdiction renders the whole process a nullity.⁴⁵

⁴⁵ Omary Athumani@Magari and others vs. Republic, Criminal Appeal No. 173 of 2016 CAT Dar Es Salaam (unreported).



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7. **Mussa Mwaikunda v Republic** [2006] TLR 387
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14. **Republic v Nasa Ginnors Ltd** [1955] 22 EACA 434
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