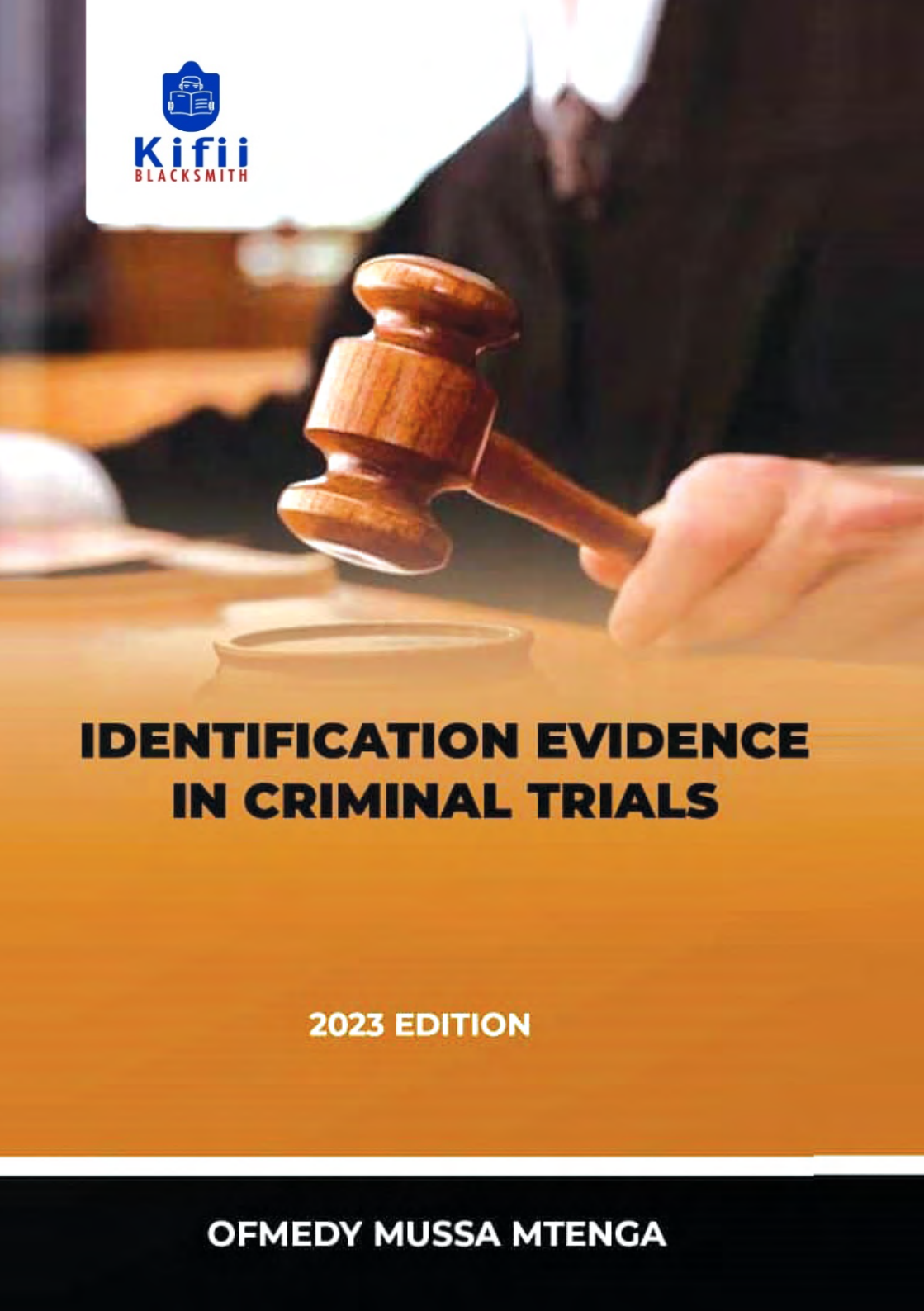




IDENTIFICATION EVIDENCE IN CRIMINAL TRIALS

2023 EDITION

OFMEDY MUSSA MTENGA

CRIMINAL PRACTICE MANUAL

IDENTIFICATION EVIDENCE



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FOREWORDS

This manual aims to be used as a guide for law practitioners such as defence counsels, State Attorneys, Public Prosecutors, Honorable Judges & Magistrates, law enforcement officers and students, to address well issues of identification evidences that they come across in criminal trials. It may also be a good instrument in appeals before the High Court and Court of Appeal, using it as a checklist to determine propriety of identification evidences that were considered by the trial Court.

A good number of current Court of Appeal precedents have been included to update the reader on the current legal positions to apply. It is my hope that this manual will produce fruitful results in the administration of criminal justice in Tanzania.



PART ONE

IDENTIFICATION EVIDENCE

1.1 Meaning of identification evidence

This generally refers to any type of evidence that tends to prove the identity of a person who committed a particular crime.¹

1.2 Types of identification evidence

Under the common law jurisdictions, there are several types of identification evidences. However, this manual will discuss only six types of identification evidences which often appear in practice under the legal system of Tanzania. They include the following;

- (1) Visual identification,
- (2) Voice identification,
- (3) Identification by recognition,
- (4) Dock identification,
- (5) Identification by ID - Parade and
- (6) Forensic identification

¹ Oxford reference material, legal dictionary (2023)



PART TWO

VISUAL IDENTIFICATION EVIDENCE

2.1 Meaning

Visual identification evidence is evidence based wholly or partly on what a person saw the suspect do or his presence at the scene during the incidence or any other fact connected to the matter at issue.² It may be by a witness who saw the suspect for the first time or by recognition where the witness was familiar with or knew the suspect before.³

2.2 Admissibility of visual identification Evidence

It is an elementary rule in East Africa and England that, evidence of visual identification is one of the weakest kind and most unreliable. Therefore, courts should not act on it unless all possibilities of mistaken identity are eliminated and fully satisfied that the evidence before it is absolutely watertight.⁴

In such cases conditions favoring a correct identification are of the utmost importance. In the case of ***Philip Rukaza vs R***,⁵ the Court of Appeal stated that;-

2 Criminal Trial Court's Benchbook, Australia (2023)

3 Jumapili Msyete v. Republic, Criminal Appeal No. 110 of 2014 CAT (unreported).

4 Abdall Bin Wendo and Another v R (1953) 20 E.A.C.A 166, Waziri Amani v Republic (1980) TLR 250

5 Philip Rukaza v R Criminal Appeal No 215 of 1994 (Mwanza) (unreported)



"We wish to say that it is not always impossible to identify assailants at night and even where victims are terrorized and terrified. The evidence in every case where visual identification is what is relied on must be subjected to careful scrutiny, due regard being paid to all the prevailing conditions to see if, in all the circumstances, there was really sure opportunity and convincing ability to identify the person correctly and that every reasonable possibility of error has been dispelled."

1.3 Checklist for visual identification

Through my court practice, I have prepared a checklist of conditions that I use as a test to determine correctness of visual identification evidences. This checklist has been helpful to me especially in appeal cases to determine whether the appeal will stand or not. The list below is not conclusive as there may be other factors to consider depending on each case. Any evidence by a witness who purports to have seen the suspect at the scene or committing the offence may be tested based on the following;⁶

- (a) Whether or not the witness knew the suspect before.

⁶ Chacha Mwita & 2 Others vs Republic, Criminal Appeal No. 302 of 2013 CAT Mwanza (unreported). Sion Benard v Republic, Criminal Appeal No. 279 of 2013, Derick Alphonse & Another vs Republic, Criminal Appeal NO. 23 of 2015 CAT Mbeya (unreported) pg.9,10., Waziri Amani vs Republic [1980] TLR 250&Raymond Francis vs Republic [1994] TLR 2



- (b) If he did not know the suspect before, whether any identification parade was conducted thereafter.
- (c) If identification parade was conducted, whether any description of the suspect was made to the police during reporting the matter prior to it.⁷ It is a requirement that the witness must have described the suspect to the police prior to ID parade.
- (d) What period had elapsed between the original observation and the conduct of identification parade. Unreasonable lapse of time may cast doubts on correct identification.
- (e) Whether it was day or night.⁸
- (f) If it was night time, what was the source of light which assisted the witness to identify the suspect?⁹
- (g) The intensity and illumination of light which enabled the identification.¹⁰

⁷ Godfrey Richard vs Republic, Criminal Appeal No. 365 of 2008, CAT at Dodoma (unreported), Rashid George @ Mvungi and another vs Republic, Criminal Appeal No.424 of 2016, CAT at Tanga. (Unreported), Gwisu Nkonoli and three others, Criminal Appeal No. 359 of 2014, CAT at Dodoma (unreported), Omary Hussein Ludanga and another vs The Republic, Criminal Appeal No. 547 of 2017, CAT at Arusha (unreported) Rex versus Mwango Manaa [1936] 3 EACA 29

⁸ Heleniko Ndimki@Kaleji & another vs Republic, Criminal Appeal No.443 of 2018 CAT (unreported) pg.9

⁹ Yusuph Sayi &2others vs Republic, Criminal Appeal No.589 of 2017 CAT (unreported) pgs.13&14

¹⁰ Kurubone Bagirigwa & 3 Others vs Republic, Criminal Appeal NO. 132 of 2015 CAT Mwanza (unreported) pg.8,Bakari Jumanne@ Chigalawe &3 others vs Republic, Criminal Appeal NO.197 of 2018



- (h) Proximity (distance) between the witness and the suspect during the commission of the crime.¹¹
- (i) Time spent under observation when the suspect was seen by him committing the crime.¹²
- (j) Is there any material discrepancy between witnesses on the description of the accused?
- (k) Was the identifying witness in a terror-mood at the material time when the offence was committed? If yes, how long did the state of terror last and whether that would negate possibility of proper identification?
- (l) Does the witness have sight problems either of seeing long distance or short distance? The case which may be applicable to some elderly persons and those others with sight impairment.
- (m) Whether there was any conversation. Identified voice may corroborate other identification of visions analyzed by the witness.

CAT (unreported).

11 Heleniko Ndimki@Kaleji & another vs Republic, Criminal Appeal No.443 of 2018 CAT (unreported) pg.9

12 Heleniko Ndimki@Kaleji & another vs Republic, Criminal Appeal No.443 of 2018 CAT (unreported) pg.9



PART THREE

DOCK IDENTIFICATION EVIDENCE

3.1 Meaning Dock identification

Dock identification is identification of accused person by a person who is stranger to him in the dock during trial. It occurs when a witness points out the accused standing at the dock and identifies him as the culprit who committed the crime.¹³

3.2 Legal position of dock identification

The current legal position in Tanzania is that, dock identification has value only where it has been preceded by a properly conducted *identification parade* at which the witness successfully identified the accused before he was called to give evidence at the trial.¹⁴

Dock identification is essentially valuable to corroborate identification parade, without it, it is worthless and courts should not rely on it.¹⁵

However, the position is broader in some jurisdictions even within the East Africa. In Kenya for example, although generally dock

13 Jacob Mayani@Boyi vs Republic, Criminal Appeal No.566 of 2016 CAT (unreported) pg.14&15

14 Taiko Lengei vs Republic, Criminal Appeal No.131 of 2014 CAT (unreported) pg.11, Fahadi Khalifa vs Republic, Criminal Appeal No.573 of 2020 CAT (unreported) pg.13, Hamisi Ramadhani Lugumba vs Republic, Criminal Appeal No.565 of 2020 CAT (unreported) pg.17

15 Halfan Mwinshehe versus The Republic, Criminal Appeal no 54 of 2018, CAT at Dar Es Salaam(Unreported)



identification must be proceeded by a properly conducted identification parade, in rare cases it may be relied upon if the court is satisfied on facts and circumstances of the case that, the evidence must be true and if prior thereto it warns itself of the possible danger of mistaken identification.¹⁶

In ***Muiruri & 2 Others versus Republic (2002) 1KLR 274***, the Kenyan court stated that;

But the holding in Gabriel Njoroge case (supra) appears to us to be too broadly couched. We do not think it can be said that all dock identification is worthless. If that were to be the case then decisions like ***Abdulla bin Wendo versus Republic (1953) 20 EACA 166***, ***Roria versus Republic (1967) EA 583*** and ***Charles Maitanyi versus Republic (1986) 2KAR 76***, among others, which over the years have been accepted as correctly stating the law concerning the testimony of a single witness on identification will have no place in our jurisprudence.

In those cases courts have emphasized the need to test with the greatest care such evidence to exclude the possibility of mistaken identification before such evidence is accepted and acted upon to found a conviction. We do not think that evidence will be rejected merely because it is dock identification evidence.

¹⁶ kiprono v republic (criminal appeal 50 of 2014) [2022] KECA 790 (KLR) (24 june 2022)



The court might base a conviction on such evidence if satisfied that on the facts and circumstances of the case the evidence must be true and if prior thereto the court duly warns itself of the possible danger of mistaken identification.

This Kenyan position however remains only to be persuasive not binding on our courts.



PART FOUR

IDENTIFICATION BY RECOGNITION

4.1 Meaning

This refers to identification evidence of the suspect where the witness claims to have been familiar with or knew him before. It means, the witness did not only identify the suspect but recognized him because he was familiar with him before (*he recognized him*).¹⁷

4.2 Position of law in recognition

It is trite law that identification by recognition is more reliable than the identification of a stranger since the witness is familiar with the suspect prior to it.¹⁸ However, case laws have established that courts should be aware that sometimes witnesses are liable to make mistakes in recognizing those they claim to have known before, thus to be accepted, such evidence is still required to be watertight.¹⁹

17 Jumapili Msyete vs Republic, Criminal Appeal No.110 of 2014 CAT 2014 Mbeya (unreported),

18 Jumapili Msyete (supra)

19 Hassan Shabani @ Ugoya vs Republic, Criminal Appeal No.60 of 2022 CAT (unreported) pg.14, Shamir s/o John vs vs Republic, Criminal Appeal No. 166 of 2004, CAT at Mwanza (unreported), Lidumula S/O Luhusa @ Kasuga vs Republic, Criminal Appeal No. 352 Of 2020, Cat At Dodoma (Unreported), Musa Saguda vs Republic, Criminal Appeal No. 440 of 2017. Cat at Shinyanga(Unreported)



PART FIVE

VOICE IDENTIFICATION

5.1 Meaning of Voice Identification

Voice identification is the identification by voice by the person who is familiar with the suspect's voice. In voice identification, the witness claims to be familiar with the voice of the suspect although they may or may not have seen him at the scene of crime.

5.2 Position of law for voice identification

The position of law as far as voice identification is concerned recognizes that,

- (a) Of all the categories of identification evidences, voice identification is the weakest and most unreliable and the law requires great care to be taken before acting on it.²⁰
- (b) The rationale behind requirement of watertight voice identification is that, there is always a possibility for people to imitate other people's voices to disguise identity.²¹
- (c) For it to be trusted there must be proof beyond reasonable doubt that the witness is familiar enough with the voice in question.

²⁰ (See *Nuhu Selemani v. Republic* [1984] 93, and *Stuart Erasto Yakobo v. Republic*, Criminal Appeal No. 202 of 2004 (unreported).

²¹ (See *Stuart Erasto Yakobo v. Republic* (supra).



Eg. most successful voice identifications have been between close persons such as a parent and his child, husband and wife or family members etc.²²

- (d) While the witness attempts to establish that he properly heard the suspect talking at the scene of crime, he should further explain the strength of the voice and the duration the suspect had taken in talking.²³

²² Kaganja Ally and Another v. Republic [1980] TLR 270).

²³ Hekima Madawa Mbunda And Another Versus The Republic, Criminal Appeal No. 566 Of 2019, Cat (Unreported



PART SIX

FORENSIC IDENTIFICATION

6.1 Meaning of forensic identification evidence

Forensic identification involves an analysis of the characteristics of trace material found at a crime scene and the development of a probability estimate that the material was left at the scene by a particular person. This part will discuss forensic identifications such as;

- (i) Fingerprint identification evidence,
- (ii) Handwriting identification evidence,
- (iii) Human DNA evidence and
- (iv) Ballistic expert evidence.

All such evidences tend to provide circumstantial facts to identify a person who is connected to the trace material found at the crime scene and may be used as evidence to identify who is the culprit in a particular incident.

6.1.1 Identification by Fingerprints

Fingerprints refer to impressions left by friction ridges of a human finger. Under Tanzanian law, it includes also palm print, toe print and the impression of a foot.²⁴ It is just one among other expert evidences, hence, has the same value as the opinion of any other expert. The court is neither

²⁴ See section 47 of the Evidence Act [Cap.6 R.E 2022] and 59 and 204 (1)(4) of the Criminal Procedure Act [Cap.20 R.E 2022]



bound by it nor required to take it as conclusive proof, rather, it must examine it in consideration of other evidences adduced in order to satisfy itself about the guilt of the accused. *Section 204 of the CPA* states that: -

“any document under the hand of an officer appointed for that purpose by the order of the Director of Public Prosecutions, which purports to be a report upon any **fingerprint**, or any photographic representation of fingerprints submitted to him for examination or comparison, shall be receivable in evidence in any inquiry, trial or other proceedings under this Act and shall be evidence of all facts stated in that document.”

The followings are practical essentials necessary to remember when dealing with fingerprint evidence in court.

- (1) Fingerprints are good source of evidence in criminal law because, a person's fingerprints do not change over time, and the friction ridges which create fingerprints are formed while inside the womb and grow proportionally as the baby grows.²⁵
- (2) A person's “**friction ridge patterns**” of a finger doesn't change over his lifetimes.
- (3) No two people have the same pattern of friction ridges. Even identical twins have different fingerprints.²⁶

25 Muganyizi Peter Michael & 3 others vs Republic, Criminal Appeal No.144 of 2020 CAT Mwanza (unreported) pg.35.

26 Muganyizi (supra)pg.34



- (4) Based on scientific proof, identification of individuals by means of fingerprint is based upon three premises, namely:²⁷
- (i) The ridge patterns on the digitals never change during the life of an individual.
 - (ii) The ridge patterns differ from individual to individual, and even from digit to digit in every individual.
 - (iii) Although all patterns are individual and distinct in their ridge characteristics, they vary within limits which allow for systematic classification.
- (5) If tendered in court as exhibit, it is not free from all conditions and stages in the admissibility of documentary evidences. This includes **CLEARING** first for admission, **ADMISSION** and **READING** it after it has been admitted.²⁸

6.1.2 Identification by Handwriting or Signature

The handwriting expert is not the only way or mode of proving handwritings or signatures of a person. There are various ways in which disputed handwritings and signatures may be proved in court. They include;

²⁷ ibid

²⁸ Karubone Bagirigwa & 3 Others Vs Republic, Criminal Appeal No. 132 of 2015 CAT (unreported) pg.10, Robison Mwanjisi & 3 Others V R [2003] TLR 218 and Lack Kilingani v Republic, Criminal Appeal No. 305 of 2015 (unreported)



- (i) **Proof by the writer or witness in whose presence the document was written or signed.** As a general rule, this works as a direct evidence and offers the best means of proof.²⁹
- (ii) **Opinion of a handwriting expert.** A qualified handwriting expert can also potentially be asked to authenticate a document in court.³⁰ The report shall be in accordance with the form set out in the Seventh schedule to the CPA.³¹
- (iii) **Evidence of persons who are familiar with the writing** of a person who is said to have written a particular writing. This is where a person who is not a handwriting expert testifies on the genuineness of the handwriting in dispute, based on the familiarity with it, which has not been acquainted solely for the purposes of the litigation.³²

29 DPP v. Shida Manyama @Seleman Mabuba, Criminal Appeal No. 285 of 2012 CAT (unreported)pg.23

30 Section 47 of the Evidence Act Cap.6

31 Exhibit Management Guidelines 2020 of the Judiciary

32 Section 49(1)(2) of the Evidence Act Cap.6, Joseph Mapema v. Republic [1986] TLR 148, Raymond Adolf Luis&2others vs Republic, Criminal Appeal No.120 of 2019 CAT (unreported), DPP v. Shida Manyama @Seleman Mabuba, Criminal Appeal No. 285 of 2012, Michael Mwakalula Njumba and another vs Republic, Consolidated Criminal Appeal No.376 of 2020&276 of 2020 CAT (unreported) pg.13, Happy Kaitira Burilot/a Irene Stationary and another vs International Commercial Bank (T)ltd, civil Appeal No.115 of 2016 CAT (unreported),



- (iv) **Comparison by the court** with writing made in the presence of the court or admitted or proved to be the writing or signature of the person.³³

If the handwriting or signature is to be proved by an expert, he is expected to point out the particular features of similarities or dissimilarities between the two.³⁴

A handwriting expert is not a person who tells you, this is the handwriting of such and such a man. He is the person who, habituated to the examination of hand writing, practiced in the task of making minute examination of handwriting and directs the attention of others to things which he suggests are similarities. That and no more than that, is his legitimate province.³⁵

In ***Maulidi Abdullah Chengo v Republic***³⁶, it was held that,

“The most that an expert on handwriting can properly say, in an appropriate case, is that he does not believe a particular writing was by a particular person or, positively, that two writings are so similar as to be indistinguishable. He should point out the particular features of similarity or dissimilarity between the forged

33 Section 75 of the Evidence Act Cap.6, Fauzia Jamal Mohamed vs Oceanic Bay Hotel Ltd, Civil Appeal NO.161 of 2018 CAT (unreported) pg.28&29

34 Hassan Salum Vs R (1964) EA 126.

35 Hassan Salum (ibid),

36 ***Maulidi Abdullah Chengo v R*** [1964] 1 EA 122 and Hassan Salum Vs R(ibid)



signature on the questioned document and the specimens of handwriting.”

It was further held in ***Nguku v. Republic***³⁷ that, that:

The handwriting expert is not restricted to merely pointing out the features of similarity or dissimilarity between a forged signature and specimens of handwriting. He is also entitled to express without argument an opinion on whether two handwritings are the product of the same hand. If the opinion is a confident one, and is not challenged in cross-examination, the court is entitled to accept the opinion of the expert.

6.1.3 Ballistic identification Evidence

Ballistic is the field of study of a weapon’s firing characteristics especially used in criminal cases to determine a gun’s firing capacity and whether a particular gun fired a given bullet.³⁸

Under **Section 205A(1) of the CPA**, a report prepared by a ballistic expert after examination of anything purported to have ballistic nature, may be used as evidence in any inquiry, trial or other proceedings.

It should further be noted that, ballistic expertise is not a developed science where there can be regular course or training to be undergone in any institute and given the degree or diploma

37 ***Nguku v. Republic* [2004] 1 EA 188, *Onyango v. Republic* [1969] EA 362**

38 Bryan A, Garner, Black Law Dictionary 8 Ed.



in regard thereto. One becomes an expert in ballistic by training and experience and constant observation.³⁹

6.1.4 Human DNA identification evidence

When DNA profile of a sample found at the scene of crime matches with DNA profile of the suspect, it can generally be concluded that both samples have the same biological origin hence be taken as good evidence to prove a fact.⁴⁰

Collection and analysis of samples for Human DNA is governed by the *Human DNA Regulation Act 2009*. The Process should be clearly followed to ensure reliability and maintaining chain of custody.⁴¹

As it is to all medical reports, DNA report is neither the only conclusive proof nor a legal requirement to prove the offence of rape. Rape is proved by the evidence establishing penetration of the suspect's penis into the female/victim's vagina, however slight, without her consent as for adults, and consent being immaterial for girls under the age of 18 who are not wives of the respective suspects.⁴²

39 Ahmed Shilla Mkumbo vs Director of Public of Prosecutions, Criminal Appeal No. 235 of 2010, CAT Zanzibar (unreported)

40 Anil@Anthony Arikswamy Joseph.. Appellant Vs State of Maharashtra, Criminal Appeal Nos.1419-1420 Of 2012, Supreme Court of India

41 Mboje Mawe and four others vs Republic, Criminal Appeal No. 86 of 2010, CAT (unreported), Lameck Bazil and another vs Republic, Criminal Appeal 476 of 2016, CAT (unreported), Hamis Shaban @ Hamis (Ustadhi) vs. Republic, Criminal Appeal No. 259 of 2010, CAT (unreported)

42 Simon Emmanuel vs Republic, Criminal Appeal No.531 of 2017 CAT (unreported) pg.12, Robert Andondile Komba vs DPP, Criminal Appeal



PART SEVEN

IDENTIFICATION PARADE

7.1 Meaning of ID parade

This refers to police identification procedure in which a suspect of crime is exhibited with a number of other persons, to be identified by a witness who claims to have seen him at the scene of crime.⁴³

7.2 Essentials in identification Parade

The following are principles reduced from case laws regarding identification parade which can be used when determining its propriety. When dealing with ID parade, remember the following;

- (1) Identification parade by itself is not substantive evidence, thus it cannot stand alone to convict the accused. If properly conducted, its value is to corroborate dock identification of an accused by a witness in terms of s.166 of TEA.⁴⁴
- (2) Identification parade is required only where the witness did not know the suspect before.

No.465 of 2017 CAT (unreported) pg.15 and section 130(4) of the Penal Code

43 S.60 (1) to (4) of the Criminal Procedure Act, s.38 (1)(2)(3) & (4) of the Police force and Auxiliary Services Act

44 Moses Deo v R [1987] TLR 134, Ahmad Hassan Marwa vs Republic, Criminal Appeal No.264 of 2005 CAT (unreported) pg.12, Said Lubinza & Others vs Republic, Criminal Appeal NO. 24 of 2012 CAT Tabora (unreported) pg.7, Aziz Abdallah vs Republic (1991) TLR 7



It is not required where the witness knew the suspect before.⁴⁵

- (3) It is trite law that to afford credence in the identifying witness, the conduct of the parade must be proceeded with the identifying witness's description of the suspect to the police before seeing him at the parade. In situations where an identification parade is conducted without prior description of the suspect, the identification report is taken to be unworthy of credit.⁴⁶
- (4) The rationale of conducting ID parade is to ascertain whether the witness can identify a person he purports to have seen at the scene of crime based on the description he made earlier prior to it. By doing so, apart from connecting the suspect with the incidence in question, it justifies the suspect's arrest by the police in connection to the alleged crime.⁴⁷
- (5) The suspect must be informed of his right to seek the presence of an advocate if any when the parade takes place, and at the termination of the parade, he must be asked if he is satisfied that the parade has been conducted fairly, and the reply to that must be recorded in the report. Omission

⁴⁵ God Salehe @ Shaibu Salehe vs Republic, Criminal Appeal No. 466 of 2019 CAT Iringa (unreported),

⁴⁶ Samson chacha @ Mwita Pius @ Kipepeo vs Republic, Criminal Appeal No.76 of 2018 CAT (unreported) pg.17

⁴⁷ Godfrey Richard vs Republic, Criminal Appeal No. 365 of 2008, CAT (unreported), Rashid George @ Mvungi and another vs Republic, Criminal Appeal No.424 of 2016, CAT (Unreported), Rex versus Mwan-go Manaa [1936] 3 EACA 29, Christopher Chacha @Msabi and Two Others vs Republic, Criminal appeal No. 235 CAT DSM (unreported),



to conform to that requirement is a fatal.⁴⁸

- (6) The officer conducting the parade will explain the purpose of the parade and will ask the suspect if he has any objection to any person participating in the parade. Any objection raised by the suspect will be noted in the Identification Parade Register and immediate steps taken to replace those persons to whom the suspect objects.⁴⁹
- (7) There should be eight or more persons on the parade for one suspect; ten or more for two suspects. If there are more than two suspects, more than one parade will normally be held, with different personnel being used to form each parade.⁵⁰
- (8) The accused is to be allowed to take any position he chooses and he is allowed to change position after each identifying witness has left if he so wishes.⁵¹
- (9) At the termination of the parade or during the parade, the accused should be asked if he is satisfied that the parade is being conducted in a fair manner and a note should be made of his reply.⁵²

48 Kanisius Mwita Marwa vs Republic, Criminal Appeal No. 306 of 2013 CAT Mwanza (unreported), Rashid George Mvungi & another vs R Criminal Appeal No.434 of 2016 CAT Tanga (unreported) pg.14.

49 Francis Majaliwa Deus & Two Others vs Republic, Criminal Appeal No.139 of 2005 CAT (unreported) pg.9

50 Samson Msamani v Republic [2002] TLR 79 CA

51 Rashid George Mvungi & another vs R Criminal Appeal No.434 of 2016 CAT Tanga (unreported) pg.14

52 Rashid George Mvungi & another vs R Criminal Appeal No.434 of 2016 CAT Tanga (unreported) pg.14



- (10) It is dangerous or wrong to suggest to the identifying witness that the person to be identified is believed to be in the parade. In *R V Bulatikwa*⁵³ the officer conducting the parade told the identifying witness “***you know a man called Bulatikwa whom you say killed your uncle. Come on to the veranda and see if you can find him.***” the court held this to be wrong because it was a suggestion that the person to be identified was actually in the parade.
- (11) The leading officer must be a police officer of the minimum level of Assistant Inspector of police. (NB: this was not among aspects in that case, but is in PGO 232).
- (12) Witness of identification parade must be called to testify otherwise the ID report will lack value. Failure by any of them to appear is fatal.⁵⁴

7.3 Procedure for Conducting ID Parade

As adopted by our courts from the famous cases of ***Republic Vs Mwango s/o Manaa (1936)3 EACA 39***, and ***Simone Musoke Vs Republic 1958 EA 7*** the procedure to be followed for a proper identification parade is as follows:-

- (1) The accused person is to be informed that he may wish to have a lawyer or friend present when the parade takes place.

⁵³ *R V Bulatikwa* (1941) EACA 46

⁵⁴ *Benson Kibaso Nyankonda @ Olembe Patroba Apiyo v Republic* [1998] TLR 40 CA.



- (2) The identifying witness must have given description of the suspect to the police prior to the conduct of the identification parade. See the case of *Muhidini Mohamed Lila@ Emono & 3 others vs R Criminal Appeal No.443 of 2015 CAT DSM (unreported) pg.14.*
- (3) The officer in charge of the case does not carry out the identification that he may be present.
- (4) The witnesses do not see the accused before the parade.
- (5) The accused is placed among at least 8 persons of as similar age, height, general appearance and class of life as him or her as possible.
- (6) The accused is to be allowed to take any position he chooses and he is allowed to change position after each identifying witness has left if he so wishes.
- (7) Witnesses should not be allowed to communicate with each other after they have been to the parade.
- (8) The practice is to exclude all persons who have no business at the parade;
- (9) Careful notes should be taken after each witness leaves the parade and the notes would include whether the witness identified any person and under what circumstances.



- (10) If the witness desires to see the accused walk, hear him speak, see him with his cap on or off, this should be done but all persons in the parade should be asked to do as the witness has requested as a precautionary measure.
- (11) The witness should touch the person he/she identifies.
- (12) At the termination of the parade or during the parade, the accused should be asked if he is satisfied that the parade is being conducted in a fair manner and a note should be made of his reply.
- (13) In introducing the witness to the parade, the witness should be told that he will see a group of people who may or may not include the suspected person;
- (14) Throughout the parade, it is critical that the parties conducting the parades should act fairly to avoid depreciation of identification as evidence. It is dangerous or wrong to suggest to the identifying witness that the person to be identified is believed to be in the parade.
- (15) The leading officer must be a police officer of the minimum level of Assistant Inspector of police. (*NB: this was not among aspects in that case, but is in PGO*).



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