



A forensic evidence: An impact to administration of criminal justice in Zanzibar

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Abstract

The Criminal Justice in Zanzibar is regulated by the Zanzibar Constitution of 1984 and several pieces of legislation including the Criminal Procedure Act No.7 of 2018. The law and practice on forensic evidence in the administration of criminal justice in Zanzibar originated from the criminal cases which relate to offences connecting with forensic evidence. In most cases results seem to be negative. The study aimed at examining where the problem is between law and practice. The study used documentary review and interviews in data collection methods. The study has found that there are problems in both law and practice. The Evidence Act of Zanzibar of 2016 and the Criminal Procedure Act No 7/2018. recognize the forensic evidence. However, due to unethical behavior and low skills to investigators, prosecutors and adjudicators prevail a negative impact on forensic evidence. Following those findings, several recommendations have been given including amendment of the Evidence Act No.9/2016 to improve definition of the term expert, making clarity in the law on how expertise can be obtained, the value of expert evidence or forensic evidence to be improved and the law to make clear distinction between expert opinion and third party opinion.

Keywords: administration, evidence, forensic, justice, Zanzibar

Introduction

Its cardinal principles that; “justice should not only be done but should manifestly and undoubtedly be seen to be done completely”. The principle necessitates, among other things, uses of scientific knowledge in the collection and application of evidence in the criminal justice system in some technical matters to avoid failure of justice using science in the legal matters (forensic) is supported by the fact that application of science in the modern world is considered inevitable in every aspect of life (Makata A. 2015) ^[1]. The forensic evidence implies application of science in the legal sector. It is due to the fact that lawyers are not experts of science while there are matters which cannot be determined without scientific knowledge. Without applying science in the determination of legal rights, there is danger of failure to understand the truth of certain facts. Thus, the forensic evidence is an important tool for opening the door of relationship between law and science, the relation which is very vital in this era of science and technology and for effective determination of rights in criminal cases.

Statement of the Problem

The study dealt with the problem of improper application of forensic evidence in Zanzibar criminal cases. The application in the administration of criminal justice in Zanzibar have many impacts. It is alleged that the law on forensic evidence is not sufficient, others say that there are not qualified investigators on forensic evidence, moreover, the medical practitioners are not qualified, others blame the judiciary and prosecution side.

When the case connects to forensic evidence, it is very rare for it to end without discontents from victims or other stakeholders of criminal justice. Some cases end without investigation to be completed properly, others are closed by prosecution side and others are dismissed by the courts. This study intends examine the law relating to forensic science

and the way it is applied in the administration of criminal justice in order to see where the problem is and to suggest relevant recommendations.

Methodology

The study involved an exploratory legal research where both primary and secondary data were analyzed. The primary data were obtained through interviews conducted in all five regions of Zanzibar with due care on primary data reliability. The interviews were conducted to Judicial Officers, State Attorneys, Private Advocates, Government Analysts, Doctors, Police Officers and ordinary members of society who were in one way or another relevant in giving necessary data for the study.

Scope

The study focused on forensic science puzzle in the administration of criminal justice in Zanzibar. It examined the adequacy of the law of Zanzibar on such aspect. The laws of other East African countries were narrowly examined just to see something for Zanzibar to deduce from them. The East African countries in this respect included Mainland Tanzania as legal affairs are not union matters. There is legislative difference between Mainland Tanzania and Zanzibar.

Literature Review

Several works were reviewed in the course of the study including the following:

Newborn, T. (2007), asserts that expert reports may play an essential and sometimes decisive role in settling legal issues both in the criminal and civil context. They may be used by judges and juries to help them determine the facts of a case.

They may, however also be used to legitimize preconceived convictions that are based on non-scientific evidence. There is a danger therefore, that forensic expertise may lend an aura of scientific respectability to the legal decision making process which is not only frequently unjustified but also at all times undesirable. Forensic scientists should not be allowed or should not take themselves to the position of a judge but should always be aware that the role of the expert is to pronounce upon the weight of the forensic evidence, not to address the ultimate issue.

The above assertion though it is very generally, it is useful for the purpose of this study as it helps to show the role of forensic scientists when they are called by the courts to address issues.

Additionally, Innes, M. (2003) [3], reveals that the crime investigation process. He added that the forensic evidence derived from scientific analysis of the physical detritus of the crime. Is routinely attributed the status of providing the objective proof. Indeed, it is this rhetoric of hard science that has manifestly contributed to the power of forensic techniques in modern crime investigations. It shapes how detectives and other actors within criminal justice system respond to and seek to use physical evidence. He examines that it is normal in experimental science for the local environmental conditions to be carefully manipulated to make the procedure in question work and for the results to be subject to interpretation a meaningful within an epistemic culture. Forensic science is even more subject to environmental contingencies and reliant upon the interpretative skills of the scientist.

When looking the above proposition, it can be found that it is very useful in this study and many other occasions. It tries to draw attention on the differences between forensic evidence and laboratory evidence. It shows that forensic evidence is of danger of manipulation hence relying on it requires attention. Those who deal with this kind of evidence must be very careful in order to prevent them from drawing wrongful conclusions. It means that it is not safe to rush to forming particular decision by using this kind of evidence.

Makata, A. (2011), explains that forensic medicine as a branch of medicine puts emphases on the role of health workers in the contribution to justice and human rights. He examines their responsibilities towards patients and their obligation to society in general as provided by law. On other words, it is a field of study concerned with the application of medical knowledge to the interest of law. Forensic scientists refer to application of science to legal matters in trying to address particular concerns that arise in legal setting.

This work based on medico-legal aspect of forensic evidence. It is one of the aspects of forensic evidence that where medical knowledge is applied in the law. It is not general to all branches of sciences and their application to legal matters. It is however appropriate in this research as it increases knowledge on what amounts to forensic evidence

and its coverage and the nature of such evidence. It means that the expert of a particular field is always required to apply his or her knowledge to meet the requirements of law. Moreover, Epstein, J. (2018) [4], explains that forensic evidence in many jurisdictions is subject to a number of questions. When looking it internally one may see that there is a need to ask a question on whether forensic evidence is impactful or ineffectual. The forensic evidence is different from laboratory science. The question which arises always on forensic evidence is who should lead forensic evidence investigation? This question causes forensic evidence to be faced by a number of challenges such as lack of transparency, erroneous rates and economic constraints.

The above work discusses key issues concerning forensic evidence in its generality. It reveals the vulnerable nature of forensic evidence as compared to ordinary laboratory evidence. The author draws attention to administrators of justice who want to apply forensic evidence in the determination of matters at hands that such evidence is very vulnerable and we should be careful on its author when we deal with it. The said evidence is further subject to challenges such as errors and economic constraints. This work opens door for conducting a research to see the real nature of such evidence or science in the administration of criminal justice in Zanzibar.

Results and Discussions

The discussion based on the existing laws governing the problematic situation of applying forensic evidence in the administration of criminal justice. It considers the challenges and effects in several categories of cases affected by existing situation.

Provisions of law on forensic evidence in Zanzibar

The Evidence Act No.9 of 2016 of Zanzibar provides for forensic evidence through opinion evidence, or expert's opinion. The said Act requires the court to take expert opinion when it wants to form opinion upon a point of foreign law, or of science or art, or as to identity of handwriting, or finger or thumb impression and opinion of such expert in such respect is relevant. The problem associated with section is that the provision allows the courts to consider expert opinion only when they want to form opinion on matters mentioned in the section.

Legal Practice in the Investigation of Forensic Evidence

It was found in the study that legal practice in the investigation of forensic evidence is faced by several challenges including, poor knowledge and skills on forensic evidence, insufficiency of legal provisions, unethical behavior of some officers who are supposed to take charge of forensic evidence, shortage of experts and infrastructures for forensic evidence management and judicial technicalities hence it is concluded that the law on forensic evidence is not properly applied in Zanzibar.

Effectiveness of Forensic Evidence and Related Laws in Adjudication of Criminal Cases in Zanzibar

Some cases were found to manifest problems in the application of forensic evidence. For example; *DPP V. Mariam Kipingi @ Mama Bonge, Criminal Case No.4*

(2013); in this case the accused person was charged with the offence of murder of her concubine. The facts were that the deceased was a military officer of Tanzania People Defense Force (TPDF). He was among the peace keepers in Sudan. When he returned to Zanzibar he went to their house at Fuoni. In the material night, the accused went out to buy fried potatoes and gave her concubine who after eating died. The accused went at Mwembe Makumbi and asked some youths to go to her house to carry the body of the deceased and to conceal it far away. She promised to pay them money for doing that job. She told them that she killed him by putting poison in the fried potatoes and the reason behind the killing was to get money from his bank account as he had a lot of money paid in Sudan by the United Nations (UN) as one among the peace keepers.

The youths informed the police on the matter they both went to the accused's house on the third day and found the dead body of the deceased nearly to decompose. The accused was arrested and charged with murder. The body of the deceased was sent to hospital for Post Mortem Examination to find the cause of death. The report given by the expert said that it was impossible to understand the cause of death of deceased due to decomposition of the body. The accused was acquitted on such ground.

The expert opinion in this case raised several questions as the people were asking themselves on the capacity of our experts to use their expertise to give forensic evidence which is meaningful for helping the court in arriving at a certain decision. This case verifies the fact that we have a problem on the aspects of experts and working equipment for enabling the law on forensic evidence to bring about positive effects in the administration of criminal justice.

The second one is the case of *DPP V. Mahamoud Elias Ngosha, Criminal Case No.7 (2012)*; it is another murder case in which the deceased was killed on board the ship named Flying Horse. The evidence showed that the deceased and the accused were both passengers in such ship travelling from Zanzibar to Dar es Salaam. They had sat in closer seats. The deceased bought food from the ship restaurant and invited the accused to eat. The accused thanked the deceased and allowed him to continue eating. The deceased re invited the deceased to eat. When invited to eat for the second time, the accused took knife from his body and stabbed the deceased in his stomach where the deceased died shortly. The accused was arrested and the deceased was taken back to Zanzibar port and the matter reported to nearest police station. In the course of investigation, the police sent the body of the deceased to hospital to obtain expert opinion on what was the possible cause of death of the deceased. The medical report indicated that the possible cause of death was heart failure following heart injury which the deceased faced after being stabbed.

The accused was charged with the offence of murder before the High Court of Zanzibar. In the course of hearing the case, the doctor who examined the body of the deceased was not called before the Court on the ground that he was outside the country for studies. The Court decided to proceed with the case without expert opinion on the cause of death of the accused. In its decision, the High Court of Zanzibar made the following observations:

In the cases like this, I see no need to consider expert opinion because of several reasons, the main one being the fact that the deceased left home well while having no health problem. He started suffering after being stabbed by the

accused using the knife. In this case though the expert was not called, I see no need to call him as he would tell this court what while everything had already been said by eye witnesses who witnessed the incidence.

This decision of the High Court of Zanzibar is also subject to a number of questions including the effect of law on expert opinion in the application of forensic evidence like this. The Court was considered making precedents which lower the value of forensic evidence in the criminal justice. This decision of the court also supports the idea that forensic evidence has not resulted in the positive effects in the cases by applying such kind of evidence properly in order to arrive at reasonable and just decisions.

The third case is that of *DPP V Sheha Duwaza Kheir, Criminal Case No.37 (2015)*; the case concerned with the offence of adultery. The accused was charged with such offence being alleged to have conducted sexual intercourse with the wife of PW1 and make her pregnant. In the course of investigation, Deoxyribonucleic Acid (DNA) test was conducted to determine the father and mother of the child born following allegation of adultery caused the case. The results indicated that there was 99.99% opportunity that the accused was the father of the child born by the wife of PW1. The case was instituted before the court. The expert was summoned and he gave expert opinion on the matter by using DNA results. In its decision, the court acquitted the accused person on the ground that it was not shown clearly who took the samples from the place they were taken to laboratory where the expert gave his opinion. Therefore the court rejected expert opinion on such ground.

Once again, this decision caused so many questions on what the court wants in forensic evidence. What was the problem in this case until the court to come up with such kind of decision while it was clear in the DNA report on from whom the laboratory received samples and such report was admitted the court as part of evidence in this case. The decision of the court was considered to doubt the forensic evidence which is in the common sense was considered to be more reliable than the evidence of other witnesses in this respect.

The last case is that of *Director of Public Prosecutions v Suleiman Salum Khamis, Criminal Case No. 84 (2019)*; the accused person was charged with the offence of defilement of a boy. The evidence was adduced before the Court properly that the accused took the boy from their home to the accused's house. While they were in the accused's house, the accused ordered the victim boy to put off his trousers. The boy obeyed such order and after that the accused sodomized the boy. According to the evidence of the boy such day was not the first one for the accused to sodomize him. After the boy's parents to discover the matter, they reported it to police station where investigation was initiated.

In the course of investigation, the victim was sent to hospital for medical examination. The doctor revealed that there is evidence of penetration because anal muscles are open and it is observed that the boy has experience of such penetration. This means that the evidence of the boy was corroborated by the doctor. What was said by the boy that he had been sodomized several times by the accused was also supported by the doctor after conducting his examination.

In the decision of the court, the accused person was acquitted. The main reason of the court was that the expert

who was medical practitioner did not use any scientific instrument while examining the victim to understand whether there was penile penetration in his anus. This decision was very strange because forensic evidence in the sexual offences like defilement of a boy does not use any kind of instrument in Zanzibar. The doctor by using his medical expertise and experience understands the nature of the private parts of a person while they are intact and in the situation where there has been penetration in such parts of the body.

Recommendations and Conclusion

The following recommendations have been given in the study:

Amendment of Evidence Act to Improve Definition of the Term Expert

The Evidence Act No. 9 of 2016 of the laws of Zanzibar should be amended to widen the meaning of the term expert. The new definition of expert should be in line with the provisions which deal with relevance of expert opinion. It should be shown clearly in the definition that the expert who is intended to be referred to in the Act is the expert of science, art, foreign law, handwriting, finger print, thumb impression or digital signature as the case may be and any other expertise which is intended by the law opinion to be taken for.

Making Clarity in the Law on How Expertise can be Obtained

The current legal position shows generally that expertise can be either by familiarity or training. It does not go further to explain what amounts to familiarity or training. The word training also does not sound better in this respect because the training can be even of one day. When a person attends one day training, it becomes sufficient for him or her to be an expert under the current legal position. This is not proper because such person is expected to give opinion to the court which when considered there may be huge results which can harm the rights of other persons, such person should be well defined in the law in order to avoid taking opinion of a person who is less qualified on the matter. The law should not let it be the matter to be decided by the court on who is and who is not an expert.

The Value of Expert Opinion to be improved

The law should be further amended to increase the value of forensic evidence or expert opinion. It should not be opinion evidence but rather conclusive evidence on the matter which the law requires opinion to be given. The law should put conditions on the circumstances leading to the fact that the opinion evidence is conclusive evidence. This will help the court to get evidence to rely on matters which require expert opinion and not to give its findings as if the court is an expert of everything. The conditions for admissibility of this evidence should be improved in order the status of evidence to be increased.

The Law to Make Clear Distinction between Expert and third Part Opinion

The current law puts expert opinion and opinion of other third parties on matters which are not of expertise in nature in the same box. For example the opinion of chemist on whether particular substance is narcotic drugs or not is the

same status as the opinion of on ordinary person on the existence of right or custom. This is to treat unequal equal. The law should separate expert opinion and other opinions. The separation should base on status and conditions of being admitted by the court.

Avoidance of contradictions on provisions relating to expert evidence

The law now has so many contradictions. Some provisions purport to give narration on expert of handwritings or signatures but when you read them you find that there are narrations which are not of expertise in nature. The provisions on experts of handwritings and signatures explain even the evidence of a person who witnessed writings or signature. Such kind of person is in fact not expert but when you read the provision of laws he is an expert and included in the definition of expert that he knows something on the bases of familiarity. This contradiction should be removed in the law.

Conclusion

In the modern world, every life aspect is characterized by application of science and technology. Even the criminals use science and technology when they want to commit crimes in order to make their criminal acts more advanced and difficult to control. Application of science and technology in such activities increase danger in the society and makes criminals updated being in the position of being difficult to control them.

Because criminals use science and technology in their criminal acts, it is essential for such science and technology to be applied in the administration of criminals as well. Since criminals always leave traces in the crime scenes, science and technology can help to coordinate investigation effectively and to result in successes in the administration of criminal justice. Through such science, justice can properly be administered in the society without any problems on both the accused and victims of crimes.

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