THE UNITED REPUBLIC OF TANZANIA

THE JUDICIARY OF TANZANIA

EXHIBITS MANAGEMENT GUIDELINES

SEPTEMBER, 2020

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PREFACE

Administration of justice in both criminal and civil cases is the core function of the judiciary. In adjudicating such cases, various procedural processes are involved, among them being production by the parties or their witnesses and admission, rejection and disposal of exhibits by the court. However, the judiciary has been experiencing challenges in the process of admission of exhibits and in their management. This has been caused by unsystematic and inconsistent handling of exhibits and lack of uniformity. There have also been instances of loss, misplacement, destruction and mishandling of perishable exhibits. In order to address the existing challenges, these Guidelines have been developed.

It is imperative to note that, management of exhibits form part of the trial processes and thus requires uniformity to guide Judges and Magistrates across all court levels in matters relating to admission, rejection and disposal of exhibits. Exhibits Management Guidelines is a guidance that has been developed from, inter alia, statutes, rules and case law. Therefore, these Guidelines are intended to cover tendering of exhibits in court, their admission, rejection, chain of custody and management after admission.

It is expected that the Guidelines will assist the courts in achieving the required goal. Thus, all judicial officers and other officers concerned with handling exhibits are obliged to make use of the Guidelines in handling exhibits and offer suggestions and lessons learnt in the process of using them.

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Prof. Ibrahim Hamis Juma
Chief Justice

Dar es Salaam
September.2020

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1. The Civil Procedure Code [Cap. 33 R.E. 2019].
2. The Criminal Procedure Act [Cap. 20 R.E. 2019].
3. The Cyber Crime Act [Cap. 443].
4. The Drugs Control and Enforcement Act [Cap. 95 R.E 2019]
5. The Economic and Organized Crimes Control Act [Cap. 200 R.E. 2019].
6. The Electronic Transaction Act [Cap. 442].
7. The Evidence Act [Cap. 6 R.E. 2019].
8. The Firearms and Ammunitions Control Act [Cap. 223 R.E. 2002].
9. The Magistrates' Courts Act [Cap. 11 R.E. 2019].
10. The Mutual Assistance in Criminal Matters Act [Cap. 254 R.E. 2002].
11. The Oaths and Statutory Declarations Act [Cap. 34 R.E. 2019].
12. The Police Force and Auxiliary Services Act [Cap. 322 R.E. 2002].
13. The Registration of Documents Act [Cap. 117 R.E. 2002].
14. The Stamp Duty Act [Cap. 189 R.E. 2002].
15. The Tanzania Foods, Drugs and Cosmetics Act [Cap. 219].
16. The Wildlife Conservation Act [Cap. 283 R.E. 2010].

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2. Abdallah Abass Najim v. Amini Ahmed Ali [2006] T.L.R. 55 (CAT).
3. Adan v. Republic [1973] EA 445 (CAN).
4. Director of Public Prosecutions v. Kristina d/o Biskasevskaja, Criminal Appeal No. 76 of 2016, CAT (unreported).
5. Director of Public Prosecutions v. Mirzai Pirbakhshi @ Hadji & 3 Others, Criminal Appeal No. 493 2016, CAT (unreported).
6. Director of Public Prosecutions v. Sharifu s/o Mohamed @Athumani & 6 Others, Criminal Appeal No. 74 of 2017, CAT (unreported).
7. Elias Melami Kivuyo v. Republic, Criminal Appeal No 40 of 2014, CAT (unreported).
8. Emmanuel Saguda @ Sulukuka & Another v. Republic, Criminal Appeal No. 422 "B" of 2013, CAT (unreported).
9. Fredy Stephano v. Republic, Criminal Appeal No. 65 of 2007, CAT (unreported).
10. Godbless Johnathan Lema v. Mussa Hamis Mkanga & 2 Others, Civil Appeal No. 47 of 2012, CAT (unreported).
11. Halmashauri ya Kijiji cha Vilima Vitatu v. Udaghwenga Bayay & 16 Others, Civil Application No. 16 of 2013, CAT (unreported).
12. Isaya Job v. Republic, Criminal Appeal No. 319 of 2017, HC (unreported).
13. Issa Hamisi Likamalila v. Republic, Criminal Appeal No. 125 of 2005, CAT (unreported).
14. Issa Hassan Uki v. Republic, Criminal Appeal No. 129 of 2017, CAT (unreported).

15. Japan International Corporation Agency [JICA] v. Khaki Complex Limited [2006] T.L.R. 343 (CAT).
16. Josephat L.K. Lugaimukamu v. Fr. Kanute J. Mzuwanda [1986] T.L.R. 69 (HC).
17. Juma Ismail & Another v. Republic, Criminal Appeal No. 501 of 2015, CAT (unreported).
18. Juma v. Habibu, [1975] 1 EA 108 (HCT).
19. Khalid Athumani v. Republic [2006] T.L.R. 79 (CAT).
20. Kunduchi Beach Hotel and Resort v. Mint Master Security Tanzania Limited, Civil Appeal No. 67 of 2014, CAT (unreported).
21. Lazarus Mirisho Mafie and M/S Shidolya Tours & Safaris v. Odilo Gasper Kilenga Alias Moiso Gasper, Commercial Case No.10 of 2008, HC (unreported).
22. Manje Yohana v. Fikirini Athuman, Criminal Appeal No. 147 of 2016, CAT (unreported).
23. Mashaka Abel Ezekiel v. Republic, Criminal Appeal No. 297 of 2013, CAT (unreported).
24. Paulo Maduka & 4 Others v. Republic, Criminal Appeal No. 110 of 2007, CAT (unreported).
25. Republic v. Median Boastice Mwale & 3 others, Criminal Appeal No. 2 of 2016, CAT (unreported).
26. Selemani Abdallah & 2 Others v. Republic, Criminal Appeal No. 384 of 2008, CAT (unreported).
27. Shilinde Bulaya v. Republic, Criminal Appeal No. 185 of 2013, CAT (unreported).
28. Song Lei v. Republic and Director of Public Prosecutions, Consolidated Criminal Appeals No.16 'A' of 2016 and No. 16 of 2017, CAT (unreported).
29. Sprian Justine v. Republic, Criminal Appeal No. 226 of 2007, CAT (unreported).
30. Standard Chartered Bank Tanzania Limited v. National Oil Tanzania Limited and Exim Bank, Civil Appeal No 98 of 2018, CAT (unreported).
31. Stella Masha v. Tanzania Oxygen Limited, [2003] T.L.R 64 (CAT).
32. Sumni Amma Awenda v. Republic, Criminal Appeal No. 393 of 2013, CAT (unreported).

33. Thomas Ernest Msungu @Nyoka Mkenya v. Republic, Criminal Appeal No. 78 of 2012, CAT (unreported).
34. Twaha s/o Ali & 5 Others v. Republic, Criminal Appeal No. 78 of 2004, CAT (unreported).
35. Uganda Breweries Ltd v. Uganda Railways Corporation, [2002] 2 EA 634 (SCU).
36. Yohana Kulwa @ Mwigulu & 3 Others v. Republic, Consolidated Criminal Appeals No.192 of 2015 and 397 of 2016, CAT (unreported).
37. Zainabu Nassoro @ Zena v. Republic, Criminal Appeal No. 348 of 2015, CAT (unreported).
38. Zakaria Barie Bura v. Theresia Maria John Mubiru [1995] T.L.R 211 (CAT).

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ABBREVIATIONS

CAN	Court of Appeal at Nairobi.
CAP	Chapter.
CAT	Court of Appeal of Tanzania.
CPA	Criminal Procedure Act.
CPC	Civil Procedure Code.
D.P.P	Director of Public Prosecutions.
EA	East Africa.
EOCCA	The Economic and Organized Crime Control Act.
HC	High Court.
MCA	Magistrates' Courts Act.
OSDA	Oaths and Statutory Declarations Act.
PF3	Police Form No. 3.
R	Republic.
R.E	Revised Edition.
SCU	Supreme Court of Uganda.
T.L.R	Tanzania Law Report.

DEFINITION OF TERMS

"court"	refers to the Court of Appeal of Tanzania, High Court of Tanzania, Court of the Resident Magistrate, District Court and Primary Court;
"exhibit"	refers to a document, record or any other tangible object formally admitted in court as evidence.
"register"	a book containing records of exhibits admitted in court proceedings and kept by the court.
"registrar"	refers to the Chief Registrar, the Registrar of the Court of Appeal, the Registrar of the High Court and Deputy Registrar or Acting Deputy Registrar;

CHAPTER ONE

1. INTRODUCTION

The Exhibits Management Guidelines (the Guidelines) are to be applied by judicial and other court officers responsible for handling exhibits during court processes with a view to ensuring their safe keeping, storage, disposal and ultimately, attaining timely access to justice and expeditiousness. These Guidelines are not a substitute for procedural laws rather, a guide on the manner in which exhibits are to be handled, before, during and after trial. Therefore, they should be read together with relevant statutes, rules and circulars in the administration of justice in Tanzania.

1.1. Background and Rationale for Developing the Guidelines

The Judiciary of Tanzania is implementing a Five-Year Strategic Plan (JSP 2015/16-2019/20) with three goals aimed at improving delivery of services, access to justice and expeditiousness in dispensing justice. The proper admission, keeping and disposal of exhibits enhance trust and confidence in the administration of justice and timely disposal of cases. Proper handling of exhibits, therefore, contributes to effective management of cases, which is paramount in the administration of justice. However, issues relating to admission, rejection and disposal of exhibits are beset with problems and there is dissatisfaction in the way the exhibits are handled and disposed of.

Management of exhibits form part of the trial processes and thus requires uniformity to guide Judges and Magistrates across all court levels. The current situation reveals that, there has been no uniformity in handling exhibits. Therefore, it is important for the Judiciary of Tanzania to have exhibits management guidelines on admission, rejection and disposal of exhibits tendered in court.

1.2. Objectives

The main objective of these Guidelines is to provide quick reference which guide the process of handling exhibits. In particular, the Guidelines aim at:

(a) offering concise, transparent and easy-to-follow principles and processes;

(b) providing an overview of aspects of admission, rejection and disposition of exhibits;

(c) attaining uniformity and common understanding on procedural steps to be taken by the courts, parties or their representatives; and

(d) reducing instances of conflicting decisions arising from handling of exhibits which have a similar nature.

CHAPTER ONE

2. TENDERING OF EXHIBITS IN COURT

2.1. The Concept of an Exhibit

An exhibit refers to a document, record or any other tangible object formally admitted in court as evidence.

2.2. Exhibits and Articles for Identification

An exhibit can be distinguished from an article such as document, record or other tangible object produced and marked for identification purposes ("ID"). It is marked an exhibit when duly identified, cleared and admitted. Where an article is identified but not cleared for admission it may be produced and marked for identification purposes ("ID") only.

2.3. Types and Categories of Exhibits

There are two major categories of exhibits which are real exhibits and documentary exhibits.

i) Real exhibits are tangible objects such as clothes, weapons, tools, vehicles, drugs and others.

ii) Documentary exhibit are exhibits which are in written form.

2.4. Tendering of Exhibits

In tendering exhibits, courts shall take into account principles of admissibility of exhibits.

2.4.1. Who may Tender Exhibits

Exhibits may be tendered in court during preliminary hearing by legal counsel or prosecutor if not objected. However, during hearing they must be tendered by the following-

(a) a maker or author of a document;

(b) a person who at one point in time possessed anything subject of the trial;

(c) custodian of an exhibit;

(d) actual owner;

(e) addressee;

(f) arresting, searching or investigating officer; or

(g) an officer from a corporate entity to which an exhibit relates.[1]

(h) any person with knowledge of the exhibit.

2.4.2. Conditions Precedent Before Tendering Exhibit

Before admitting an exhibit, the court must observe legal requirements for its admissibility. The witness must point out specific identification marks, brand or trade name or other peculiar features in relation to the exhibit to be tendered.

2.4.2.1.Civil Cases

Before admitting exhibits in civil cases, the court shall satisfy itself that-

(a) the witness is competent to tender the exhibit (i.e. maker, addressee, custodian, owner, possessor);

(b) the exhibit had been attached to the pleadings or included in a list of documents filed in court;[2]

(c) the exhibit is original;[3]

(d) where a party intends to tender an exhibit which is not original, he must have complied with the following conditions before it is admitted, that is:

i) the opponent who is in possession of the original has failed to produce the same even after being given notice to produce;

ii) the original is in possession of a third party who is out of reach of, or not subject to the process of the court and efforts to make him produce the same have failed;

iii) the content, existence or condition of the original has been admitted in writing by the person against whom the document is to be tendered or his representative; .....

iv) the original has been destroyed or lost, or cannot be produced within a reasonable time;

1 Thomas Ernest Msungu @Nyoka Mkenya v. Republic, Criminal Appeal No. 78 2012, CAT (unreported); Director of Public Prosecutions v. Kristina d/o Biskasevskaja v. Republic, Criminal Appeal No. 76 of 2016, CAT (unreported) and Director of Public Prosecutions v. Mirzai Pirbakhshi & 3 Others, Criminal Appeal No. 493 of 2016, CAT (unreported).

2 O. VII rr. 14, 15 and 18; and O. XIII rr. 1; and 11 of The Civil Procedure Code [Cap. 33 R.E. 2019].

3 Section 64(1) of the Evidence Act [Cap. 6 R.E. 2019].

v) the original is of such a nature as not to be easily movable;

vi) originals cannot conveniently be examined in court on account of being numerous and the fact to be proved is a general result of the whole collection; or

vii) for any other reason recognized by law a copy of the original may be admitted.

(e) if the exhibit is an instrument chargeable with stamp duty, such instrument has been stamped;

(f) if a document requires a separate declaration before it is admitted in court, such declaration has been shown as reflected below, that is:

(a) the law requires certain officials or persons to sign the exhibit, that the officials or persons have signed it.4

(b) a document from a foreign country sought to be admitted under the Mutual Assistance in Criminal Matters Act has been signed by a Judge or Magistrate or Officer in or of a foreign country and authenticated by oath of a witness or an officer of the Government of a foreign country or sealed with an official public seal of the foreign country or of a Minister.5

(g) where the document is to be registered under any law, such registration must be shown to have been done. Such documents include contract of sale, assignment, mortgage and leases.6

2.4.2.2. Criminal Cases

The procedure regarding admission of exhibits applicable in civil cases is generally applicable in criminal cases, save for the requirement of attaching them to the pleadings and list of documents.

In cases committed to the High Court for trial, documents to be tendered as exhibits in the High Court are those listed during the committal proceedings and the preliminary hearing.

4 Section 38 (3) of the Criminal Procedure Act [Cap. 20 R.E. 2019].

5 Section 38(2) (a) and (b) of The Mutual Assistance in Criminal Matters Act [Cap. 254 R.E. 2002] and Republic v. Median Boastice Mwale & 3 Others, Criminal Appeal No. 2 of 2016, CAT (unreported).

6 Section 9 of the Registration of Documents Act [Cap. 117 R.E. 2002].

2.4.3. Steps in Tendering Exhibits

Step 1: Ensure a witness has laid a foundation evidence for tendering an exhibit, (i.e. witness explains how the exhibit is connected to the case and how it came in his possession).

Step 2: Ensure the exhibit is shown to the opposing party for comment.[7]

Step 3: Whether or not there is an objection, the exhibit will be shown to a magistrate or judge to see and inspect.

Step 4: Where there is an objection, the party who seeks to tender that exhibit has to be accorded an opportunity to respond; in case a new point is raised by a party proposing to tender it, then the party objecting will rejoin.

Step 5(i): Where there is no objection, the judge or magistrate may admit the exhibit provided it has passed the admissibility test.

Step 5(ii): Where there is an objection, the presiding judge or magistrate will rule on the admissibility of the exhibit.

Step 6(i): When the exhibit is rejected it will be returned to the party who proposed to tender it.

Step 6(ii): When the exhibit is admitted the judge or magistrate will mark and endorse it.

Step 7: Once the exhibit is admitted, a person tendering the exhibit shall read out its contents in court.

It should be noted that during the tendering process, the contents of the documents should not be read out in court until it has been admitted as an exhibit.[8]

Step 8: The presiding Judge or magistrate shall ensure the Registry Management Assistant prepares and keeps a list of exhibits tendered, in the case file.

7 Isaya Job v. Republic, Criminal Appeal No. 319 of 2017, HC (unreported).

8 Manje Yohana v. Fikirini Athuman, Criminal Appeal No. 147 of 2016, CAT (unreported) and Sumni Amma Awenda v. Republic, Criminal Appeal No. 393 of 2013, CAT (unreported).

2.4.4. Procedure Where Parties Agree on Admission of Exhibits

(a) Where parties in civil proceedings agree to the admission of exhibits, they shall execute a memorandum containing a list of such documents and the court may admit such exhibits subject to other statutory requirements.9

(b) Where the exhibit is the one which the Court can take judicial notice, then, the court may hear observations from the parties but shall admit it.

2.4.5. Marking

Marking of exhibit refers to giving an identity simple to an exhibit. There is no law which prescribes the manner of marking exhibits. In practice, it constitutes letters and numbers such as "P1" or "D1" depending on the side of the party (prosecution or defence).

Prosecution

Both in civil and criminal cases "P" followed by numbers is usually preferred. i.e. P1, P2, P3...

Defence

Both in civil and criminal cases D1, D2, D3...

Court

Where a court witness produces an exhibit, it is usually marked as C1, C2, C3 ...

The admitted exhibits is duly stamped, dated and signed by the court in the face itself.

2.4.6. Endorsement

Once an exhibit has been admitted it shall be endorsed. The endorsement shall contain the following particulars:

(a) the number and title of the case;
(b) the name of the person producing it;
(c) the date on which it was produced;
(d) a statement of it having been so admitted; and
(e) a signature or initials of the presiding judge or magistrate.

There is no prescribed format, but the practice has been a rubber stamp containing spaces for filling the stated particulars.[10]

9 Section 60 of Evidence Act [Cap. 6 R.E. 2019].

10 O. XIII r. 4 of the Civil Procedure Code [Cap. 33 R.E. 2019], Japan International Corporation Agency v. Khaki Complex Limited [2006] T.L.R. 343, A.A.R. Insurance Agency (T) Limited v. Beatus Kisusi, Civil Appeal No. 67 of 2015, CAT (unreported) and

2.4.7. Value of Exhibits (Weight/Value Attached to the Exhibit)

The general rule is that only the exhibits which have been marked and endorsed in accordance with O. XIII r. 4 of the Civil Procedure Code [Cap. 33 R.E. 2019] (the CPC) form part of the record of the court and will be considered in decision making.[11] The above principle equally applies to criminal proceedings. However, failure to endorse exhibits may not necessarily render them invalid.[12]

It should be borne in mind that admission and evidential weight of exhibits are two different concepts and processes.

Admission is a process of receiving an exhibit in the course of hearing and evidential weight of exhibit connotes the probative value to be attached to the exhibit.

2.4.8. Where the Authenticity of Document is at Issue

When the objection to authenticity of the exhibit such as forgery is raised during tendering, the court may record but reserve the decision thereon to the final determination of the case. The reason is that authenticity touches the contents of the documents which cannot be dealt with at the admission stage.

2.4.9. Exhibit Wrongly Admitted

If a document which is inadmissible because of a legal impediment is otherwise admitted, the court may, during final determination, disregard the same, for reasons to be recorded in the judgment.

2.4.10. Stages for Tendering of Exhibits

Exhibits may be tendered at various stages of the proceedings depending on prevailing circumstances. In criminal cases, the exhibits are tendered during:

(a) Plea Taking

i) During plea taking exhibit can be tendered by prosecutor if the accused person pleads guilty to the offence.

ii) The trial court shall require the prosecutor to read facts of the case and tender exhibits to prove the offence charged.

iii) The accused will be required to comment on the exhibits tendered.

Kunduchi Beach Hotel and Resort v. Mint Master Security Tanzania Limited, Civil Appeal No. 67 of 2014, CAT (unreported).

11 Godbless Jonathan Lema v. Mussa Hamis Mkanga, Civil Appeal No. 47 of 2012, CAT (unreported).

12 Standard Chartered Bank Tanzania Limited v. National Oil Tanzania Limited and Exim Bank, Civil Appeal No 98 of 2018, CAT (unreported).

iv) If the accused does not dispute the contents of the exhibits tendered to form part of the facts then the exhibits will be admitted, marked and endorsed to form part of the court record.

v) If the accused disputes contents of exhibits tendered, then his plea will be changed to that of not guilty. The case will be set for other steps as if there was no plea of guilty. This applies where the exhibit tendered is to be relied upon to prove the elements of the offence one has pleaded guilty to.

(b) During Preliminary Hearing

Prosecution exhibits may be tendered during preliminary hearing[13] if it is not disputed by the opposite party.

(c) During Trial

When witnesses are called to give oral evidence, exhibits, if any, may also be tendered.[14]

(d) Inquiry/Trial Within Trial

An inquiry/trial within a trial[15] is intended to determine the voluntariness of the confessional statement such as cautioned or extrajudicial statements.[16] In order to prove voluntariness of the confession, an accused may wish to tender a PF3 or any medical chit, report or document to show that he was tortured. This procedure is not conducted in primary courts.[17]

(e) Sentencing

In order to impose an appropriate sentence, the court may consider exhibits and documents tendered by both parties. Such documents may include documentary evidence showing previous conviction and medical chit or report showing the convict's health status.[18]

Note: Where an exhibit is of perishable nature or is subject of destruction, depreciation or evaporation, the court may order its disposal and such court order is a sufficient proof of a matter in dispute during the trial.

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13 Section 192(4) of Criminal Procedure Act [Cap. 20 R.E. 2019].

14 Section 228 of Criminal Procedure Act [Cap. 20 R.E. 2019], Adan v. Republic [1973] EA 445 at page 446 and Khalid Athumani v. Republic [2006] T.L.R. 79 (CAT) at page 83.

15 Inquiry and trial within a trial refer to the same thing. It is called inquiry in the District Courts and in the Courts of Resident Magistrates. The same process is called trial within trial in the High Court. See the case of Manje Yohana v. Fikirini Athuman, Criminal Appeal No. 147 of 2016, CAT (unreported) and Sumni Amma Awenda v. Republic, Criminal Appeal No. 393 of 2013, CAT (unreported).

16 Twaha s/o Ali & 5 Others v. Republic, Criminal Appeal No. 78 of 2004, CAT (unreported) and Selemani Abdallah & 2 Others v. Republic, Criminal Appeal No. 384 of 2008, CAT (unreported).

17 Yohana Kulwa @ Mwigulu & 3 Others v. Republic, Consolidated Criminal Appeals No.192 of 2015 and 397 of 2016, CAT (unreported).

18 Section 236 of the Criminal Procedure Act [Cap. 20 R.E. 2019]; Paragraphs 28 and 39 of the Third Schedule of MCA [Cap. 11 R.E. 2019].

CHAPTER
THREE

3. ADMISSION AND CHAIN OF CUSTODY OF EXHIBITS

3.1. Introduction

The main legislation governing the admission of exhibits is the Evidence Act [Cap. 6 R.E. 2019] (the Evidence Act). In the course of applying the law, courts have also developed several principles to be considered when admitting documents or articles.

3.2. General Principles for Admitting or Rejecting Exhibits in Court

The general principles governing admission of exhibits in both civil and criminal proceedings underscore factors including the following:

(a) Relevance: the exhibit is relevant if it tends to make a fact that it is offered to prove or disprove either more or less probable. For the document to be admitted it must be both authentic and relevant to the fact in issue. A document is authentic when it is written by its supposed author and is genuinely and what it purports or is asserted to be.

(b) Originality: the document is receivable in evidence when it is original (primary evidence) unless the law permits otherwise (secondary evidence).[19]

(c) Authenticity: the exhibit is authentic if it meets certain requirements of reliability. Reliability may be established by first explaining the foundation of the exhibit. So, when exhibit is objected for want of foundation it means its competency is called upon into question.[20]

3.3. Principles to be Considered on Admission of Electronic Exhibits

Admissibility of electronic exhibits is governed by the Evidence Act and the Electronic Transactions Act. In addition, there are other principles developed by case law as hereunder:

19 Sections 63-68 of the Evidence Act [Cap. 6 R.E. 2019].

20 Director of Public Prosecutions v. Sharifu s/o Mohamed @ Athumani & 6 Others, Criminal Appeal No. 74 of 2016, CAT (unreported).

(a) whether the exhibit is relevant, as defined by the Evidence Act;

(b) whether the exhibit is authentic in the sense that, the person tendering it can show that it is what it purports to be. Proof needed may be by way of affidavit of the originator;

(c) whether the exhibit is offered for its substantive truth. If the evidence is hearsay, it will be inadmissible;

(d) whether it is the original or duplicate of the document in question; and

(e) whether the probative value substantially out-weighed by the danger of unfair prejudice or other identified harm.[21]

3.4. Cautioned or extrajudicial statements

Another form of exhibits used in criminal proceedings includes statements written on caution. Under section 27 of the Evidence Act, it is called a confessional statement of the accused person. The same is admissible in evidence if it meets certain legal requirements as shown below:

(a) It must be made to a police officer, member of the police force or a person in authority or justice of the peace (extrajudicial statement);

(b) It must be voluntary and free from any threat, promise or other prejudice held against the suspect;

(c) The accused was informed that the statement may be used in court against him as evidence.

(d) It must be recorded in compliance with sections 57 or 58 of the CPA or any relevant law governing the subject.

(e) It must be recorded within time specified under the law.[22]

3.5. Procedure for Tendering Cautioned and Extrajudicial Statements

It has been the court practice stated in various decisions that when the cautioned statement is repudiated or retracted when sought to be tendered, a trial within a trial or inquiry is to be conducted.[23]

21 Lazarus Mirisho Mafie and M/S Shidolya Tours & Safaris v. Odilo Gasper Kilenga Alias Moiso Gasper, Commercial Case No. 10 of 2008, HC (unreported), sections 40A and 64A of the Evidence Act [Cap. 6 R.E. 2019] and sections 18 and 19 of the Electronic Transactions Act [Cap. 442].

22 Section 50 and 51 of the Criminal Procedure Act [Cap. 20 R.E. 2019], Selemani Abdallah & 2 Others v. Republic, Criminal Appeal No. 384 of 2008, CAT (unreported) and Mashaka Abel Ezekiel v. Republic, Criminal Appeal No. 297 of 2013, CAT (unreported).

23 Selemani Abdallah & 2 Others v. Republic, Criminal Appeal No. 384 of 2008, CAT (unreported).

The procedure entails the following steps:

(a) When an objection is raised as to the voluntariness of the statement intended to be tendered as an exhibit, the trial court shall stay the proceedings;

(b) The trial court shall commence a mini trial from the stage where the main proceedings were stayed and call upon the prosecutor to adduce evidence in respect of that aspect of voluntariness. The witnesses must be sworn or affirmed;24

(c) Whenever a prosecution witness finishes his evidence, the accused or his advocate should be given opportunity to ask questions;

(d) Then the prosecution will re-examine its witness;

(e) When all witnesses had testified, the prosecution shall close the trial within trial or inquiry;

(f) Then the court is to call upon the accused to give his evidence and call witnesses, if any. They shall be sworn or affirmed;

(g) Whenever a witness finishes, the prosecution to be given opportunity to cross-examine the witness;

(h) The accused or his advocate to be given opportunity to re-examine his witness if he so wishes;

(i) After all witnesses have testified, the accused or his advocate shall close his case in the trial within trial or inquiry;

(j) The court will then deliver a ruling on a trial within trial or inquiry;

(k) In case the court finds out that the statement was voluntarily made (after delivery of the ruling) then the court should resume the proceedings by reminding the witness who was testifying before the proceedings were stayed that he is still on oath and should allow him to tender the statement as an exhibit. The court shall accept and mark it as an exhibit and thereafter require the witness to read it loudly in court;25

(l) If the court finds out that the statement was not made voluntarily, it shall reject it and resume the main trial; and

(m) In cases of trials with the aid of assessors, the assessors shall be discharged during the process of trial within trial and invited back after the ruling after which the witness who was testifying before the proceedings were stayed that he is still on oath and shall allow him to tender the statement as an exhibit. The court shall accept and mark it as an exhibit and thereafter require the witness to read it loudly in court.

24 Section 198 of the Criminal Procedure Act [Cap. 20 R.E. 2019].
25 Sumni Amma Awenda v. Republic, Criminal Appeal No. 393 of 2013, CAT (unreported).

3.6. Exhibits Under Special Circumstances

There are special circumstances where exhibits that would otherwise be inadmissible may be admissible. These are:

3.6.1. Statement of Persons who cannot be Called to Testify

This is governed by section 34B (2) of Evidence Act. The statement is tendered when the maker of the statement cannot be brought before the court for various reasons.[26] One of the conditions is for the party intending to rely on such statement to issue a notice requesting for the tendering of the statement.[27]

3.6.2. Government Analyst Report

This is governed by section 203 of the Criminal Procedure Act [Cap. 20 R.E. 2019] (The CPA). It refers to reports purportedly made under the hand of any government analyst. The court has to presume:

(a) that the signature to any such document is genuine; and

(b) that the person signing it held the office which he professed to hold at the time when he signed it.

Also, the court has the duty, if it thinks fit, to summon and examine the analyst as to the subject matter of that report.

3.6.3. Finger Print Expert Report

Reports stated here include fingerprint or any photographic representation. The same are receivable in evidence in any inquiry, trial or other proceedings. In such circumstances, under section 204 of the CPA, the court has to:

(a) presume that the signature to any such report is genuine; and

(b) on its own motion or on application by the accused or his advocate, summon, and examine or make available for cross-examination, the person who made such report.

26 Section 34B (2) (a) of the Evidence Act [Cap. 6 R.E. 2019]. These reasons must be met cumulatively. See: Fredy Stephano v. Republic, Criminal Appeal No. 65 of 2007 CAT and Juma Ismail & Another v. Republic, Criminal Appeal No. 501 of 2015 CAT (both unreported).

27 Section 34B (1) and all sub-section (2) (b) to (f) of Evidence Act [Cap. 6 R.E. 2019] and Elias Melami Kivuyo v. Republic, Criminal Appeal No 40 of 2014, CAT (unreported).

3.6.4. Handwriting Expert Report

Under section 205 of the CPA, reports on any handwriting, or any photographic representation of any handwriting, photographic prints, enlargements or other annexures referred to in it and signed by the handwriting expert, shall be admitted after satisfying the following requirements; -

(a) The report shall be in accordance with the form set out in the Seventh Schedule to the CPA;

(b) The court has to summon for examination and/or cross-examination of the maker of the report, if it thinks fit or if the accused or his advocate so requests;

(c) The court has to presume the signature to any such report, print, enlargement or annexure is genuine.

3.6.5. Medical Reports

The reports made by medical practitioners such as PF3, post mortem examination reports are governed by section 240 of the CPA for proceedings conducted before subordinate courts and section 291 of the CPA, for proceedings before the High Court.[28]

Medical reports may be admitted as exhibits in court but the court shall:

(a) inform the accused of his right to require the person who made the report to be summoned for cross-examination;

(b) presume that the signature to any such document is genuine;

(c) presume that the person signing the same held the office; and

(d) presume that the person had qualifications which he professed to have when he signed the same.

Note: The presumptions stated under sections 203, 204, 205, 240 and 291 of the CPA, as shown above, are emphasized under sections 88 to section 99 of the Evidence Act.

3.7. Rejection of Exhibits

When exhibits are tendered in court, they have either to be admitted or rejected. When an exhibit is admitted, it follows therefore that the court admitting it must place it on record by endorsing or marking it. The exhibit that has been rejected for the reasons stated in the ruling rejecting it, must be returned to the person producing it.[29]

28 Sprian Justine v. Republic, Criminal Appeal No. 226 of 2007, CAT (unreported) and Issa Hamisi Likamalila v. Republic, Criminal Appeal No. 125 of 2005, CAT (unreported).

29 Japan International Cooperation Agency [JICA] v. Khaki Complex Limited [2006] T.L.R. 343 (CAT).

3.8. Chain of Custody

In a legal context, chain of custody means the sequential order with which a piece of evidence is to be handled while the case is under investigation. It is a chronological paper trail that exhibits are collected, handled, analyzed, or otherwise controlled from seizure to exhibition. It contains the following principles:

(a) the main governing provisions of the laws included section 38 of CPA, section 35 of the Police Force and Auxiliary Services Act, and Police General Orders (PGO) No. 229;

(b) there are other laws that specifically govern the procedure on seizure. Under section 22(1) of the EOCCA, on offences of the economic nature, section 31 of the Cyber Crimes Act, on offences relating to Cyber Crimes and section 48 of the Drugs Control and Enforcement Act, on drugs cases;

(c) in order to uphold the standards and requirements of the law, it is necessary that the chain of custody is unbroken without discrepancies;[30]

(d) the chain of custody of exhibits starts when the exhibit is seized and ends when it is tendered in court;

(e) the seizure process depends on the nature of the exhibit and the offences involved;

(f) the procedure to be followed when an exhibit is seized is the following:

   i) the officer seizing the article has to issue a receipt acknowledging seizure of the thing;

   ii) the receipt should bear 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;

   iii) need for the presence of an independent witness who has to sign the certificate of seizure;

   iv) the exhibit has to be labeled, coded or sealed;

   v) record of who transferred and how it was transferred or from one place to another or from one person to another;

   vi) the custody record has to reflect who and how the exhibit was kept;

   vii) the record must show who has been in control of the same since it was seized; and

30 Paulo Maduka & 4 Others v. Republic, Criminal Appeal No. 110 of 2007, CAT (unreported). It is important to note that there are decisions that limited the applicability of this case. See Issa Hassan Uki v. Republic, Criminal Appeal No. 129 of 2017, CAT (unreported).

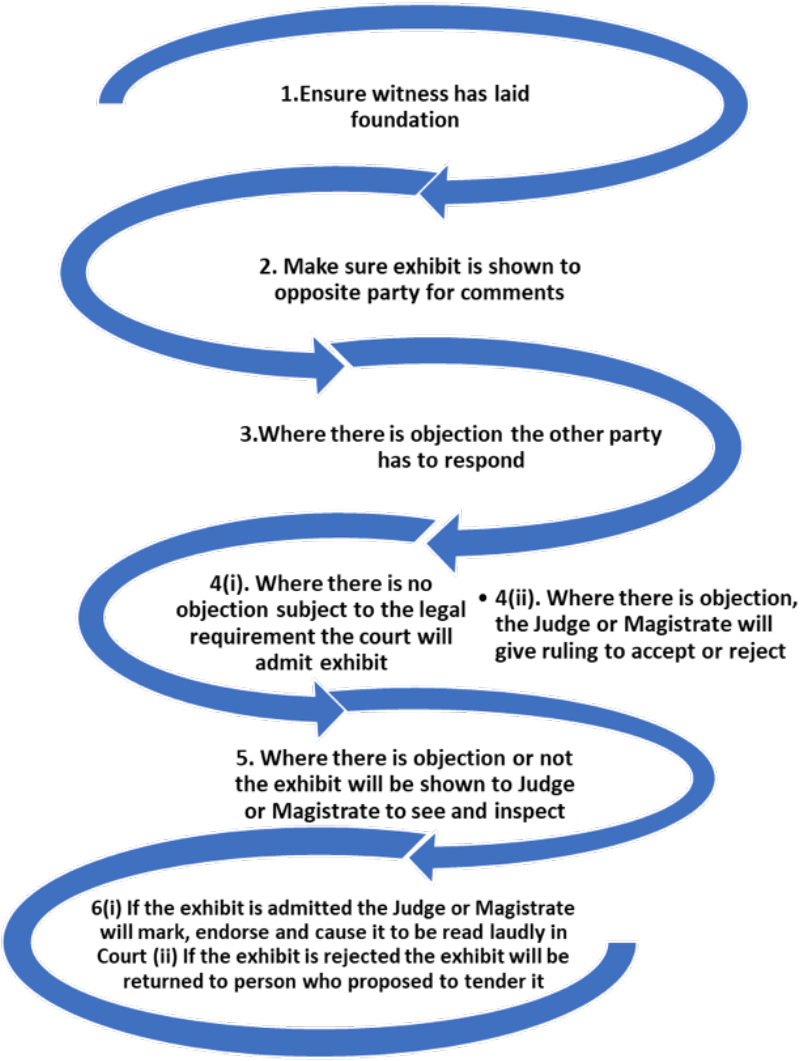
viii) the record must show who and how it was handled for analysis and who analyzed it.

(g) the law requires that all procedures in respect of the chain of custody must be adhered to.[31]

Note: The idea behind recording the chain of custody, is to establish that the alleged exhibit is in fact related to the alleged crime rather than, for instance, having been planted fraudulently to make someone appear guilty.

31 Zainabu Nassoro @ Zena v. Republic, Criminal Appeal No. 348 of 2015, CAT (unreported).

EXHIBIT ADMISSION PROCESS



CHAPTER FOUR

4. STORAGE AND DISPOSAL OF EXHIBITS

4.1. Introduction

The court is duty bound to make sure that exhibits received during court proceedings are properly managed. Management of exhibits among other things, entails maintaining a chain of custody, storage and ultimately their disposal as provided in the CPA and other relevant pieces of legislation.

4.2. Storage of Exhibits

The main objectives of exhibit storage include maintaining the integrity of exhibit, ensuring its safe keeping and security and maintaining chain of custody.

(a) Every court shall designate a special room(s) for the purpose of storing exhibits;

(b) Every exhibit room shall have in place an exhibit register identifying information along with location where the item has been stored/transferred;

(c) The Registrar or Magistrate-in-Charge shall inspect the exhibit registers at the end of every month for purposes of ensuring existence of the exhibits and disposition where necessary;

(d) Once the exhibits have been admitted in evidence, the court shall record their numbers of admission and place of storage;

(e) The exhibit rooms shall be maintained under the exclusive control of an authorized court officer;

(f) The Registrar or Magistrate-in-Charge shall appoint in writing employees who shall be responsible for day to day control and management of the exhibit room;

(g) Exhibits should be stored in exhibits rooms or store at a court registry, police station or any safe place as the court may direct depending on its nature;

(h) There should be a record in the case file indicating that a particular exhibit has been stored in a place other than the court's exhibit room;

(i) Documentary exhibits which are sensitive should not be stored in a case file;

(j) The exhibit room should be clean, equipped with fire suppression equipment, numbered shelves and boxes for easy reference and identification;

(k) Storage of exhibit should involve dual verification to maintain an accurate chain of custody;

(l) Exhibits relating to drugs and money should be verified with regard to weight and amounts through the exhibit register;

(m) All exhibits should have stickers or tags against the exhibit register;

(n) Stickers and tags should bear exhibit case numbers and parties;

(o) All exhibits should be maintained in the original packaging and stored in a consistent manner taking safety, security and easy identification; and

(p) To ensure safety there shall be an inventory on monthly or quarterly basis of the exhibits stored.

4.3. Disposal of Exhibits

Disposal of exhibits is done at the conclusion of the trial or appeal as indicated by the CPA.32 Disposal aims at ensuring that an exhibit has met the retention schedule.33 However, under special circumstances disposal can be done before or during trial as indicated below:

(a) the court shall give disposal order in respect of exhibit tendered in court and if not disputed shall be returned to the lawful owner until needed by the court;

(b) the court shall give disposal order in respect of exhibit that was tendered in court immediately after completion of the trial or appeal or on expiration of appeal time (where there is no appeal).

(c) the court order shall direct exhibits tendered be returned to the lawful owner, destroyed, sold and or forfeited to the government;

(d) during monthly inspection of exhibit rooms, the court shall determine exhibits eligible for disposal or destruction; and

(e) a 30 days' notice of intent to dispose of exhibits be issued to the state attorney's office, seizing agency, defense counsel, victims or accused person(s).

32 Section 351 (1) of Criminal Procedure Act [Cap 20 R.E. 2019] also Song Lei v. Republic and Director of Public Prosecutions, Consolidated Criminal Appeals No. 16 'A' of 2016 and No. 16 of 2017, CAT (unreported).

33 Section 353(1) of the Criminal Procedure Act [Cap.20 R.E.2019].

4.4. Storage and Disposal of Exhibits Under Special Circumstances

4.4.1. Perishable Goods

(a) The court may order storage or disposal of perishable goods before commencement or during trial depending on the nature of the exhibit; and

(b) Storage or disposal order shall direct where and how the perishable goods shall be kept and treated. [34]

4.4.2. Explosives and Dangerous Exhibits

Explosive and dangerous exhibits such as petrol, kerosene, poison, bombs and similar substances are special items which must be treated with great care. To ensure this:

(a) the court shall take precautions when admitting exhibits of explosive nature;

(b) the court shall order the local fire department or appropriate agency to transfer such exhibits to the fire department or the said agency for storage;

(c) the court shall order storage or disposal of exhibits before commencement or during the trial depending on the nature of the exhibits; and

(d) the police or special agency and the prosecutor shall be responsible for returning the exhibit to the police station or special agency office for destruction or otherwise as may be stipulated by the order.

4.4.2.1. The court shall record the proceedings for the said disposal

4.4.2.2. Firearms and Ammunitions

(a) The Judge or Magistrate or in their absence, any authorized officer shall order exhibits of this nature to be kept at police station armoury; and

(b) The court shall order return or forfeiture of the exhibit depending on the circumstances of the case.[35]

34 Section 353(2) of Criminal Procedure Act [Cap. 20 R.E. 2019].
35 Section 56 of the Firearms and Ammunitions Control Act, [Cap. 223 R.E. 2002].

4.4.2.3. Illicit Drugs

(a) The court shall order exhibits of this nature to be kept in strong exhibit court room at the court registry or at Drugs Control and Enforcement Authority or any other agency;

(b) Upon determination of the case the court shall order disposal of exhibits by way of confiscation along with the instrument used to facilitate commission of the offence;[36]

(c) The court shall order disposal of drugs tendered as exhibit by way of destruction;[37] and

(d) The court shall require responsible authority to comply with the disposal order.

4.4.2.4. Drugs, Foods and Cosmetics

(a) The court shall order exhibits of this nature to be kept in strong exhibit room at the court registry or at Tanzania Drugs, Foods and Cosmetics Authority; and

(b) Upon determination of the case the court shall order disposal of exhibits by forfeiture to the Government or by way of destruction.[38]

4.4.2.5. Animals

(a) The court shall order storage or disposal of animal goods before commencement or during trial depending on the circumstances of the case;

(b) Where possible the court shall order the animals to be under the custody of the claimant or as the court may determine until determination of the case; and

(c) On conclusion of the matter, the court shall order disposal of exhibits by way of sale or return to the owner.

4.4.2.6. Trophies

(a) The court shall order storage of exhibits of this nature in strong exhibit room at the court registry or at Tanzania Wildlife Management Authority depending on the circumstances of the case; and

36 Section 49A of Drugs Control and Enforcement Act [Cap. 95 R.E 2019]
37 Rule 14 of the Drugs Control and Enforcement (General) Regulations, 2016 (GN. No. 173 of 2016).
38 Section 354(2) of Criminal Procedure Act [Cap 20 R.E. 2019] and Section 115 of The Tanzania Drugs, Foods and Cosmetics Act [Cap. 219]

(b) Upon determination of the case the court shall order disposal of exhibit by order of confiscation.39

4.4.2.7. Minerals

(a) The court shall order storage of exhibits of this nature in strong exhibit room at the court registry or at the ministry responsible for minerals depending on the circumstances of the case; and

(b) Upon determination of the case the court shall order disposal of exhibits by order of confiscation.

4.4.2.8. Exhibits in more than one Case or Court

(a) The court shall take note in the register of the exhibits used in more than one case or court;

(b) Exhibits used in more than one case or court may be stored in the court where the exhibit was first admitted; and

(c) The last court where the exhibit was admitted shall order disposal upon determination of the case.[40]

4.4.2.9. Where Exhibits Cannot be Brought Before the Court

(a) The court shall order storage of exhibit that cannot be brought before the court to be stored by respective authority or agency; and

(b) Upon determination of the case the court shall order disposal of exhibits depending on the nature of the exhibit.

4.4.2.10. In Extradition Cases

(a) The court shall admit and store exhibits in the manner and procedure that the foreign country (requesting state) wishes to be followed; and

(b) Where the requesting state has not provided the manner and procedure for taking exhibit, the court shall admit and certify the exhibits and send the same to the Attorney General for transmission to the requesting state.41

39 Sections 84(2) and 88 of the Wildlife Conservation Act [Cap. 283 R.E. 2010].

40 Song Lei v. Republic and Director of Public Prosecutions, Consolidated Criminal Appeals No.16 'A' of 2016 and No. 16 of 2017, CAT (unreported).

41 Sections 9 (2) and 11 9(1) (2) of the Mutual Assistance in Criminal Matters Act [Cap 254 R.E. 2002].

IN THE .....COURT OF.....AT.....

EXHIBIT REGISTER

S/NO.	DATE OF RECEIVING EXHIBIT	CASE NO.& PARTIES	TYPE OF EXHIBIT	EXHIBIT MARK NO.	EXHIBIT TAG NO.	LOCATION OF STORAGE	WEIGHT/ AMOUNT OR OTHER IDENTIFICATION OF EXHIBIT	NAME & SIGNATURE RMA HANDLING THE EXHIBIT	EXHIBIT ROOM MANAGER / RECEIVER (NAME AND SIGNATURE	MANNER AND DATE OF DISPOSAL OF EXHIBIT	NAME OF MAGISTRATE ADMITTING THE EXHIBIT	NAME OF MAGISTRATE DISPOSING THE EXHIBIT	NAME & SIGNATURE OF THE RECEIVER AT DISPOSAL	REMARKS

COMMENTS

.....

Date.....

DEPUTY REGISTRAR/ MAGISTRATE-IN-CHARGE

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