



STATEMENT ON THE VIOLATION OF LAWS AND DUE PROCESS IN THE ARREST AND DETENTION OF JOURNALIST ERICK KABENDERA

Introduction

Erick Kabendera is a freelance investigative journalist who writes on various local and international publications. Erick Kabendera was arrested by people who identified themselves as police force on 29th July, 2019 around 18:00p.m at his residential area in Mbweni, Kinondoni district, Dar es Salaam where they broke into his house and left with him. According to his wife and neighbours' statements, the car used to transport him was not a police car and had the registration number T746 DFS.

CCTV footage shows people identifying themselves as police officers arresting and taking Erick Kabendera from his residential home.

His wife reported that a group of six people who identified themselves as police officers in plain clothes arrived by car and surrounded the house for more than three hours from 3:00pm to 6:00pm, then arrested Mr. Erick Kabendera saying they were taking him to Oysterbay police station.

Before his arrest, his mobile phones were not reachable and his sim-cards were inactive. He probed with Vodacom service providers who responded that they have received orders from the Tanzania Communications Regulatory Authority to block his sim-cards. The reason for blocking his calls was because he was communicating with his neighbors and local government leaders on the presence of an anonymous car at his gate after observing it on the CCTV camera.

Complexity on where he was detained before he was seen by relatives

Initially police officers at Oysterbay and Central police station denied to have Erick Kabendera under custody. After a long confrontation and producing evidence that Kabendera was taken by the police force, Dar es Salaam Regional Police Commissioner, Lazaro Mambosasa, admitted that Erick Kabendera was arrested by the police force and he was detained for an interrogation regarding his nationality.

This action also raised a lot of questions that prompted the Coalition to start looking for Erick by engage the Court. After unsuccessful contact with Erick Kabendera, the Tanzania Human Rights Defenders Coalition, through its advocates, filed a bail application at Kisutu Resident Magistrate Court before the Resident Magistrate Rwezile.

Before the police station which was detaining him was revealed, the wife of Mr. Kabendera searched for her husband in many police stations to no avail. However she successfully met with the Regional Police Commissioner, Lazaro Mambosasa, who told her to go the police station on 31st July, 2019. Also the wife reported to have received a call that instructed her to surrender his husband's passport and academic transcripts to the Minister for Home Affairs.

The tendency of shifting an accused person from one police station to the other has currently escalated. The acts have been done without informing relatives of the suspects and therefore creating mass confusion on the safety of the suspect. This deprives the right for legal representation and family visitation. The police officers violated these rights as the wife could not see her husband and advocates representing him could not access him for two straight days.

After a thorough follow up, we were able to know that Mr. Kabendera was at Kilwa road police station. This station was not mentioned by police officers earlier.

More than 44 hours elapsed since Mr. Kabendera was arrested and detained in an unknown police station until on 31st July, 2019 when it was revealed that he is at Kilwa Road Police station.

Legal Requirements on the Rights of the Accused

The Criminal Procedure Act, 1985 Cap 20 R.E 2002, has clearly stipulated the procedures of arrest, detention and charging of persons.

The due process of the Criminal Procedure Act was not adhered to in his arrest. The due process was violated as follows:

1. The accused was not informed of the reasons for his arrest.

Section 23 of the Criminal Procedure Act was not adhered to. When he was arrested he was not told anything apart from being informed that he was being taken to a police station, and that was after neighbours surrounded the car and inquiring on where Kabendera was being taken.

Grounds for his arrest were later revealed in a Press Conference after several days had passed. This is not a proper legal procedure. The accused person ought to have known the reasons for his arrest

and detention at the police station. When he was apprehended on 29th July, 2019, the police neither gave reasons for his arrest nor for probing into his nationality for the second time. Despite the allegations and interrogation, the Immigration Department has not issued any information regarding the investigation conducted. Instead they handed him to officers of the police force, when it seemed that there was no longer a nationality issue. The main challenge is that until now the Immigration Department has not announced that Erick is a citizen and his passport and those of his family are still under their custody. It has to be noted that the immigration issue was the first offense that Erick Kabendera was charged with after his arrest.

2. Being brought to court within the legal timeframe

Section 32(1) of the Criminal Procedure Act states that:

“when a person has been taken into custody without a warrant for an offence other than offence punishable with death, the officer in charge of the police station to which he is brought may, in any case, and shall if it does not appear practicable to bring him before an appropriate court within twenty four hours after he was taken into custody, inquire into the case and , unless the offence appears to that officer to be of a serious nature, release the person on his executing a bound with or without sureties, for a reasonable amount to appear before the court at a time and place named in the bond; but when he remains in custody he shall be brought before the court as soon as practicable .”

3. The right to legal representation and meeting with relatives or friends when the accused’s statement is being taken

Section 54 of the Criminal Procedure Act of 1985, stipulates on the right of the accused to contact his/her lawyer and close relatives. When it comes to the right to contact a lawyer or a close relative or his family; this journalist has been interrogated in the absence of his lawyer being or a close person contrary to the due process. This right was not fully granted because initially advocates and his family failed to be present when he was issuing his statement due to the fact that he was being held at unknown police post.

4. Presumption of Innocence

Article 13 (6)(b) of the Constitution of the United Republic of Tanzania states that no person charged with a criminal offence shall be treated as guilty of the offence until proved guilty of that offence.

His arrest shows that the police officers assumed that Mr. Kabendera is guilty even before it was proved in the court.

5. Changing his charges more than three times within five days

Another thing that shows oppression against Erick is the violation of law and pressing to find Erick guilty of charges that were not the basis for his arrest. The incident of arrest, interrogation and later being brought to court, has involved three main charges (Nationality, Sedition and Publication of False Information) before being brought to court for other three charges (Money Laundering, Tax Evasion and Leading Organized Crime).

a) Interrogation on his nationality

When Mr. Erick was arrested for the first time he was interrogated by immigration officers regarding his nationality. It is worth noting that this is the second time this journalist is arrested and interrogated regarding his nationality. In 2013, the then Minister for Home Affairs, Emmanuel Nchimbi (hereafter the minister), issued a public statement clearing claims that Mr. Kabendera was not a Tanzanian. He clearly stated that there is no doubt that Erick Kabendera and his parents are Tanzanians.

Furthermore the statement given by the Immigration Department on behalf of the Minister stated that the journalist's nationality together with that of his parents were not questionable. The minister also ordered the two Immigration officers who had subjected Mr. Kabendera to a probe over his nationality to be disciplined for harassing the family.

In 2013, the then director of complaints in the Immigration Department, Mr. Augustine Shio, said that the whole exercise of determining Mr. Kabendera's nationality and that of his parents was ill-advised and was not handled professionally. He further clarified that the citizenship and nationality of Erick Kabendera and that of his family was not questionable.

Following these statements by the former Immigration officer, there is a great confusion on the reasons for his second arrest given that they had already proven that he is a Tanzanian. And if he is not a Tanzanian, then what is his nationality?

b) On Sedition Charges

After being interrogated for several hours by immigration officers, Mr. Erick was detained and interrogated on online sedition charges. These charges were connected to his article on “The Economist” Newspaper that was published on 31st July, 2019. However these charges on sedition and publication of false information were also changed when he was brought to court and charged with other three offenses.

c) Charges on Tax Evasion, Leading Organized Crime and Money Laundering.

While interrogations were ongoing, Mr. Erick’s residence was searched three times without finding anything that may incriminate him for nationality offenses, cybercrimes or sedition. However the last time his house was searched, police officers ordered him to surrender his bank and cars cards. Erick Kabendera submitted the documents he had in that time and cooperated in the submission of documents that were not inside during that time. He directed them where the documents could be found.

After a strong commotion for 5 days straight of efforts to apply for his bail to no avail, finally on the 7th day on 5th August, 2019, the police brought Erick Kabendera to Court. The advocates were prepared for a hearing on his bail for until that time, no charge against him was filed.

When the investigative journalist Erick Kabendera was arraigned before Kisumu Resident Magistrate Court, he was informed of three charges against him including Tax Evasion, Leading Organized Crime and Money Laundering. The offenses Erick Kabendera is charged with are legally unbailable. Therefore the journalist remains to be in detention until when the investigation on his case is completed and his case is heard at the High Court that bears the mandate to hear the case.

These laws on Fraud and Money Laundering are among the oppressive laws that currently seem to violate the suspects’ rights to bail and to be heard in court on time. Arresting someone while the

early investigation is not sufficient to hold a person guilty is against human rights. These offenses cause people to be under detention for many years without their cases being heard. Recently the Tanzania Chief Justice, Prof. Ibrahim Juma recommended that people should not be arrested until when the investigation has reached a satisfying stage. Erick's charges were changed last minute. The question remains how did they get sufficient time to conduct an investigation that was sufficient to charge Erick with these main offenses that were not the initial offenses during his arrest?

In this time when international communities are closely observing issues of human rights violation in the country, the issue of arresting and charging Erick Kabendera has brought a bad image of our nation. Various embassies have already issued statements that express their concern on the situation of human rights and how the rights of suspects like Erick have been violated before being taken to court.

OUR CALL:

- a. Due to the fact that initially Mr. Erick was interrogated by immigration officers regarding his nationality before the charges against him were changed, we urge immigration officers to issue a statement on whether Erick is a Tanzanian citizen or not according to their investigation;
- b. We also recommend that the issue of nationality should not be used as a weapon to silence Tanzanians who like to inquire on basic national matters;
- c. We recommend that if immigration officers have failed to prove that Mr. Erick is not a Tanzanian citizen, they should return Mr. Erick's passport and that of his wife and children;
- d. We urge the police force to follow the due procedure when arresting people, including informing them of the reasons for their arrest and informing relatives the police station where the person is taken and being held, so as to avoid confusion and suspicion that the person is abducted while he is arrested by security agencies;
- e. Police officers should ensure that all rights of the accused such as contacting a lawyer as well as his family immediately after detaining the suspects are respected;
- f. Police officers should abstain from all actions that may indicate violation of suspects' rights such as torture and humiliation of any kind;
- g. The police should ensure that suspects are brought to court within the legal time limit;

- h. We call upon lawyers in Tanzania to contemplate and take measures against The Anti Money Laundering Act, 2006 particularly on the issue of bail;
- i. In this period when the government through the Ministry for Constitution and Legal Affairs, is reviewing the national Criminal Justice System, lawyers and Human Rights Defenders across the country should object the powers and vague mandate bestowed on the Director of Public Prosecutions (DPP) in operating these cases especially in attaining various illustrations and evidence in such charges.
- j. All offenses should be bailable. All laws that shrink the suspects' right to get bail should be reformed so as to give suspects their right to liberty while security agencies continue with investigation or while the court continues with the case.
- k. The Parliament of the United Republic of Tanzania should pass a law that allows all offenses to be bailable.
- l. The court should be given the mandate to decide on bail. Laws should not prohibit bail but the court should be given the mandate to decide on bail according to the circumstances and weight of the charges.
- m. Conditions for bail in our courts and the police force should be evened up so as to put easier conditions that will enable suspects to get their right to bail.
- n. The police force and all agencies responsible with the administration of justice should not arrest suspects before the investigation is completed. We join the Chief Justice of Tanzania, Hon. Ibrahim Juma in ensuring that people are not arrested until when sufficient investigation is conducted. This will reduce the time that suspects stay in detention.
- o. The law should explicitly provide that if a certain period of time elapses while the investigation is incomplete then the case should be dismissed.
- p. We recommend that there should be a procedure of a police evidential hearing. This will assist the timely attainment of justice. Under this procedure, the police should present all illustrations and evidence before the court during the evidential hearing. The court should hear and the suspect should respond and if the court is satisfied that there is a case against the suspect and that he may be guilty, then the court should order the suspect's arrest. This recommendation will help reduce the time spent by the police in investigation while the suspect is denied his/her basic rights including presumption of innocence until proven

guilty. Also if the evidence is complete, the case will continue quickly and justice will be attained.

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