

TANZANIA HUMAN RIGHTS DEFENDERS COALITION



STATEMENT ON THE ARBITRARY ARREST OF INVESTIGATIVE JOURNALIST ERICK KABENDERA

Erick Kabendera is a freelance investigative journalist who writes on various local and international publications. Erick Kabendera was arrested by police officers on 29th July, 2019 around 18:00p.m at his residential area in Mbweni, Kinondoni District, Dar es salaam. Moreover, according to his neighbours' statements, the car used to transport him was not a police car, the car had registration number T746 DFS.

There was a CCTV footage that 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 and without identity cards arrived by car and surrounded the house, then arrested Mr. Erick Kabendera saying they were taking him to Osterbay police station.

Before his arrest, his mobile phones were not reachable and his sim cards 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.

After unsuccessful contact with Erick Kabendera, the Tanzania Human Rights Defenders Coalition, through its advocates filed a Bail Application at Kisutu

Resident Magistrate Court that has been assigned to Resident Magistrate Rwezile.

Police officers at Oysterbay denied to have custody of Erick Kabendera so did the Central Police. The Regional Police Commander, Lazaro Mambosasa, has been re-called in a press conference to accept that the Police Officers arrested Erick Kabendera to question his nationality. This raised a number of questions and prompted the coalition to file a bail application so that the court can order the Police Officer in Charge bring him to the court of law.

The tendency of shifting an accused person from one police station to the other has increased, following the trend that has increased in arresting journalists and other citizens. 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.

Before his whereabouts were known, the wife of Mr. Kabendera had gone to all police stations attempting to see her husband to no avail. She successfully met with the Regional Police Commander, Lazaro Mambosasa, who told her to go the police station on 31st July 2019. The wife also reports to have received a call that instructed her to surrender his husband's passport and academic transcripts to the Minister for Home Affairs

We have received information that Mr. Kabendera is at Kilwa Road police station. However, the station was not mentioned by the police force before.

More than 24 hours have lapsed since Mr. Kabendera was arrested and detained in an unknown police station until later this morning when it was revealed that he is at Kilwa Road Police station.

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 law was generally violated. That will be noted from the nature of the arrest that was conducted; Procedural improprieties included:

1. No grounds / reasons for Arrest were clearly disclosed to the Accused. Section 23 of the Criminal Procedure Act. The police officers later stated the grounds for his arrest in a Press Conference. This is a typical wrong procedure. The accused person ought to have known the reasons for his arrest before confinement and later his detention in the police station.
2. Charging of offenders ,Section 32(1) of the same Act clearly stipulates 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.”

Mr. Kabendera was arrested on 29th July 2019. It is now 2 days since his arrest and he has not been brought to court or charged with any offence.

3. The right to communicate with lawyers and family. Section 54 of the Criminal Procedure Code 1985. Stipulates the right to communicate with a lawyer and family, this would serve the purpose for Legal Representation and Family Presence during recording his Statement. Such rights were not exercised because the Journalist’s statement was recorded in absence of his advocate or a close relative. It was even impossible to communicate

with him because all his mobile phones were de activated and the advocates and family members did not know which police station was holding him.

4. Presumption of Innocence ,Article 13 (6)(b) of the Constitution of the United Republic of Tanzania stipulates on the right to presumption of innocence; no person charged with a criminal offence shall be treated as guilty of the offence until proved guilty of that offence.

It clearly seems that the police officers in charge have gone beyond to assume that Mr. Kabendera is guilty, even before it has been proven, and have failed to bring him to court.

It is worth remembering that in 2013, the then Minister for Home Affairs, Emmanuel Nchimbi (hereafter the minister), issued a public statement clearing claims that Mr. Kabenderas 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 kabendera to a probe over his nationality to be disciplined for harassing the family.

Upon his arrest on 29th July 2019, the police neither gave reasons for the arrest nor did they give the reasons for questioning his nationality for the second time. The Immigration Department has not given any statement on the matter either.

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.

Mr. Shio revealed that money was paid to the two Immigration Officers by an external source to probe Kabendera's nationality, but noted that it was not illegal.

These previous statements and publications raise a lot of questions and concerns over why such doubts of his nationality has been raised for the second time, and if he is not a Tanzanian which nation does he belong to?

Information that has reached us this afternoon is that police officers are heading to Mbweni, Erick Kabendera's residence together with advocates from Tanzania Human Rights Defenders Coalition to search his house.

The magistrate in charge shall hear the bail application on 01.08.2019.

OUR CALL

- a. It is our advice that the Police Officers in charge of police stations to observe procedures in arrest, detention and charging of criminals according to the criminal procedure Act 1985 , to reduce doubts and fear that has spread in society with respect to abduction even when at times when it is a genuine arrest.
- b. To grant all rights which an accused person must be entitled to such as legal representation and family visitation.
- c. Accused persons to be treated with Humanity and free from Torture.
- d. Accused persons to be taken to court timely and charges to stipulate clearly.

Issued by National Coordinator

Tanzania Human Rights Defenders Coalition

On 31st July 2019