

DEFENCE OF ALIBI

Meaning

1. According to ***Oxford Dictionary of Law, 6th Edition, Oxford University Press***, Alibi is “a defence to a criminal charge alleging that the accused was not at the place which the offence was committed at the time of its commission and so could not have been responsible for it”.
2. For Court to accord weight to the defence of alibi, the accused must demonstrate his alibi though on balance of probabilities as such, calling witnesses, bringing receipts, tickets, video footages, hospital admission slip and so forth may properly carry this burden.
3. What accused person is essentially communicating when raising such a defence is that, he or she could not be able commit the alleged wrong for the reason that he/she was elsewhere. However, the burden not only to disprove the defence but also to prove the culpability of accused beyond all reasonable doubts remains on the prosecution.

Recognition and its Applicability in Tanzania

4. The defense of Alibi is recognized under the provisions of Section 194 of the Criminal Procedure Act, Chapter 20 of 2022 Revised Edition of Laws of Tanzania (hereinafter called “**the Law**”).
5. It is the requirement of the Law that, in case the accused person intends to rely on this defense, he is required to give a Notice of Alibi or Particulars of Alibi to the Court having conduct of his case and the prosecution before the commencement of trial or before the prosecution case is closed respectively.

Consequences of failure to give such a notice/particular of Alibi

6. If accused raises a defence of alibi without having first given a notice or furnished the prosecution with particulars pursuant to the Law, the court may in its discretion, accord no weight of any kind to such a defence. Judging from the wording of section 194 (6) of the Law, absence of notice or particular does not give court an automatic mandate to reject the defence, though, it may affect weight placed on it. (*See also: Case of High Court of Tanzania, at Bukoba District Registry, Criminal Sessions Case No 27 of 2021 R v. Leonard Jonathan*).

Expectation

7. A defence attorney is expected to determine from the accused persons' set of facts whether, there is such a defense so that appropriate actions may be taken and timely.

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