

Criminal Procedure (Plea Bargaining Agreement)

GOVERNMENT NOTICE NO.180 Published On 5/2/2021

THE CRIMINAL PROCEDURE ACT,
(CAP. 20)

RULES

(Made under section 194H)

THE CRIMINAL PROCEDURE (PLEA BARGAINING AGREEMENT) RULES, 2021

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THE CRIMINAL PROCEDURE (PLEA BARGAINING AGREEMENT) RULES, 2021

Citation

1. These Rules may be cited as the Criminal Procedure (Plea Bargaining Agreement) Rules, 2021.

Interpretation
Cap. 20

2. In these Rules unless the context require otherwise-
“Act” means the Criminal Procedure Act;
“court” means the High Court and the courts subordinate thereto except primary courts;
“pre sentence report” means a report submitted before the court prior to sentencing of accused person regarding the information relating to the offence and history of the accused person and his family;
“representative” means an advocate, a relative, a friend or any other person legally competent to represent the accused;
“victim” means a person or a relative of a person directly and proximately affected as a result of commission of a crime and includes a complainant

Notification for
plea agreement

3. A person charged with an offence which is not exempted under section 194F of the Act or his representative or, as the case may be, the prosecutor, may orally or in writing notify the court of his intention to negotiate a plea agreement.

Scope of plea
agreement

4.-(1) A plea agreement may be in respect of-
(a) a promise to plead guilty to a charge in exchange

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- for a recommendation for a lesser sentence;
- (b) a promise to cooperate as a witness for the prosecution in exchange for reduced charges or a reduced sentence or to both; or
- (c) a plea of guilty to-
 - (i) a minor and cognate offence;
 - (ii) a lesser offence;
 - (iii) some charges or counts in exchange for a withdrawal of one or more, charges or counts, in case of multiple charges.

(2) Where there are more than one accused person, a plea bargain may be entered into in respect of any one of the accused persons and the subsequent plea agreement shall apply and be binding only on the accused person who entered into agreement.

Notice to appear

5.-(1) After receiving the notification under rule 3, the court shall give directions if the prosecutor and the accused persons or his representative are in court and if they are not in court it shall summon them to appear on date fixed for directions.

(2) Where the court is satisfied that the notification has been made voluntarily, it shall prescribe time, not more than thirty (30) days, for the prosecutor and the accused or his representative to negotiate and conclude a plea agreement.

Disclosure

6.-(1) The prosecution shall, in the interest of justice, disclose to the accused all relevant information, documents or other matters obtained during investigations to enable the accused to make an informed decision with regard to plea agreement.

(2) The disclosure made under sub rule (1) shall not compromise state security, security of witnesses or integrity of judicial process.

Interest of victim, and community to be taken into consideration

7.-(1) The prosecution shall, before entering into a plea agreement, take into consideration the interests of the victim and the community and shall have due regard to-

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- (a) the nature and the circumstances relating to the commission of the offence;
- (b) the criminal record of the accused if any;
- (c) the loss or damage suffered by the victim or complainant as a result of offence;
- (d) the interests of the community; and
- (e) any other relevant information.

Plea agreement negotiations

8. The court shall not participate in plea negotiations between the parties.

Form of plea agreement

9. The plea agreement shall be executed in the manner prescribed in Form A set out in the First Schedule.

Compensation

10.-(1) A plea agreement may include a clause for the payment of compensation to a victim by an accused person.

(2) Where a plea agreement includes a clause for compensation payable to the victim by an accused person, the value or form of compensation shall be as agreed to after negotiations between the victim and the accused person and endorsed by the prosecutor if in his opinion, the compensation serves the end of justice.

(3) A proposal to include the payment of compensation to the victim in a plea agreement or any negotiation for compensation payable to the victim may be made or initiated by the accused person or the victim.

(4) Where negotiations for compensation payable to the victim break down or the prosecutor determines that the proposed compensation defeats the end of justice, the prosecutor shall not include the proposal for compensation in the final draft of the plea agreement.

Submission of plea agreement

11. The party who gave notification under rule 3, shall submit a negotiated plea agreement to the court for registration.

Procedure before registration

12. The court shall, before registration of plea agreement, satisfy itself that the plea agreement was voluntarily obtained and the parties were competent to enter into such

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agreement.

Plea hearing date

13. Where the plea agreement has been registered under the provisions of section 194D of the Act, the court shall set a plea hearing date.

Recording of plea agreement by court
Act No. 1 of 2017

14. Subject to the provisions of section 194E of the Act, the court shall, after placing the accused on oath, inform him his rights, and shall satisfy itself that the accused understands the following-

- (a) the right-
 - (i) to plea not guilty, or having already so pleaded, the effect of that plea;
 - (ii) to be presumed innocent until proved guilty;
 - (iii) to remain silent and not to testify during the proceedings;
 - (iv) not to be compelled to give self-incriminating evidence;
 - (v) to a full trial; and
 - (vi) to be represented by an advocate of his choice at his expenses or to legal representation in accordance with the :Legal Aid Act;
- (b) that by accepting the plea agreement, he is waiving his rights as provided for under paragraph (a);
- (c) the nature of the charge he is pleading to;
- (d) any liable maximum penalty, including imprisonment, fines, community service order, probation or conditional discharge;
- (e) any applicable forfeiture;
- (f) the court's authority to order for compensation, restitution or both; and
- (g) that by entering into plea agreement, he is waiving the right to appeal except as to the legality or severity of sentence or if the judge or magistrate sentences the accused outside the agreement.

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Procedure at plea agreement

15.-(1) The charge shall be read and explained to the accused in the language that he understands and the accused shall be invited to take plea.

(2) The prosecutor shall lay before the court the factual basis for the plea agreement and the court shall determine whether there exists a basis for the agreement.

(3) The accused person shall freely and voluntarily, without threat or use of force, execute the agreement with full understanding of all matters.

(4) A plea agreement confirmation shall be signed by the parties before the presiding judge or magistrate in the manner set out in Form A in the First Schedule and shall become part of the court records and be binding on the prosecution and the accused.

Rejection of plea agreement

16. The court may, for sufficient reasons to be recorded in the proceedings, reject the plea agreement, save that the rejection shall not operate as a bar to any subsequent negotiation by the parties.

Consequences of plea agreement rejection

17. Where the plea agreement is rejected, the case shall proceed before another judge or magistrate of competent jurisdiction and the said plea agreement shall be removed from the case file.

Conviction and necessary orders

18. Where the court accepts the plea agreement, the court shall-

- (a) record such agreement and proceed to convict and sentence the accused accordingly; or
- (b) make any necessary orders if the plea agreement does not dispose of the case.

Withdrawal from plea agreement

19. Any party may, at any stage of the proceedings before the court passes sentence, withdraw from the plea agreement.

Inadmissibility of evidence of plea

20. Subject to section 194E(b) (iii) of the Act, evidence of the following-

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negotiations and related statements

- (a) a plea of guilty which was later withdrawn; or
- (b) any statement made in the course of plea negotiations which does not result in a plea of guilty or which results in a plea of guilty that is later withdrawn,

shall not be admissible in any subsequent criminal proceeding against the accused.

Sentencing recommendation

21.-(1) A prosecutor and the accused person or his representative may each, make a specific recommendation to the court as to the sentence to be imposed and include the recommendation in the final plea agreement.

(2) Notwithstanding the recommendations of the parties, the court shall retain sole discretion in sentencing.

(3) Where the plea agreement involves compensation, the court shall ensure compensation is paid to-

- (a) in the case of government or a government institution, the Treasury Registrar; or
- (b) the victim.

Disposal of case other than sentencing

22. Where the court registers a plea agreement, it shall dispose of the case in accordance with the consequences prescribed under section 194B of the Act.

Application to set aside conviction, sentence or order

23. An application to set aside a conviction to set aside a conviction, sentence or order under section 194G of the Act, shall be made by chamber summons supported by an affidavit.

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FIRST SCHEDULE

(Made under rule 9)

PLEA AGREEMENT FORM

FORM A

IN THE HIGH COURT OF TANZANIA IN THE DISTRICT REGISTRY/ COURT OF
THE RESIDENT MAGISTRATE/IN THE DISTRICT COURT OF AT

.....

REPUBLIC

VERSUS

(Name of the accused person(s))

PLEA AGREEMENT

The accused and prosecutor on behalf of the Republic agree as follows:

1. Accused enters into this plea agreement

| | |
|---|---|
| 1 | Accused enters into this pleas agreement and pleads quality freely, voluntarily, without threat, force, or coercion of any kind without promise or benefit of any kind, other than as contained in this agreement. |
| 2 | Accused knowingly, voluntarily and truthfully admits the facts contained in this agreement. |
| 3 | Accused agrees to plead guilty to the offence of _____ contrary to section (s) _____ of the Penal Code, (or any other law –insert the law contravened) |
| 4 | Accused understands every element of the offence to which the accused is pleading guilty, that the maximum potential imprisonment of that offence is: _____, and that the maximum potential fine is: Tsh. _____. Mandatory minimum sentence? Yes: _____ (number of years) No _____ |

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| 5 | Victim in this case? Yes: _____ No _____ If yes, accused agrees that the victim is _____. Accused agrees to compensate the victim Tsh. _____ being the financial loss sustained by the victim. Accused agrees to pay the amount in _____ (weekly/monthly/quarterly) installments until paid in full. |
| 6 | Upon acceptance of the agreement by the court and the entry of judgment and sentence, and fulfillment by the accused of all terms and conditions of the Plea Agreement, the Prosecutor on behalf of the public agrees the accused will face no other charges based on facts related to this investigation but only if those facts were known to the prosecution at the of the prosecution's signing of this plea agreement. |
| 7 | Accused understands and agrees that this plea agreement is limited to the criminal charges listed here and is not a waiver, settlement or compromise of any civil or administrative remedies that may be available to any victim, the government, or any other agency or authority. |
| 8 | Accused understands: <i>[insert language here summarizing the law regarding withdrawal and rejection of plea agreements.]</i> |
| 9 | Accused is represented by an advocate in this case. Yes: _____ No _____ |
| 10 | Accused understands that Accused has the following rights: (a) the right to plead not guilty, or having already so pleaded, to persist in that plea; (b) the right to a trial; (c) the right at trial to cross-examine adverse witnesses, to be protected from compelled self-incrimination, to testify and present evidence, and to compel the attendance of witnesses; (d) the right to appeal a conviction. |
| 11 | Accused understands that the prosecution has the right, in a prosecution for perjury or false statement to use against the accused any statement that the Accused gives under oath. |
| 12 | Had this case gone to trial, the Prosecution would have presented evidence to prove the following facts beyond a reasonable doubt: _____ _____ _____ _____ _____ _____ (continued on additional page ()) |
| 13 | Accused understands that the sentence to be imposed upon conviction on accused's guilty plea is within the sole discretion of the court, subject to the statutory maximums described above. At sentencing the prosecutor will recommend _____ At sentencing the accused will recommend _____ |
| 14 | Accused understands and agrees that no promises, agreements or conditions have been enters into regarding the charges in this case other than those expressly set out this written plea |

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| | agreement. |
| 15 | This is the entirety of the plea agreement: Yes: _____ No: _____ Additional provisions on attached Form 2 Yes: _____ No: _____ |

| | |
|--|---|
| <p>I understand the contents of this plea agreement, which has been explained to me in a language I understand. I admit the fact contained in the agreement, and I plead guilty to the charge because I am guilty. I do this knowingly, feely, and voluntarily, and without any threat, force, intimidation, or coercion of any kind.</p> <p>Accused:</p> <p>_____</p> <p>(Print Full Name)</p> <p>_____</p> <p>(Signature) _____ (Date)</p> <p>Advocate (if applicable):</p> <p>Print Full Name)</p> <p>_____</p> <p>(Signature) _____ (Date)</p> | <p>This plea agreement has been consented by the Director of Public Prosecutions or..... an officer duly authorised by him in that behalf and after consultation with any victims, and is being done in the interests of justice after considering all the relevant facts and circumstances.</p> <p>Prosecutor:</p> <p>_____</p> <p>(Print Full Name)</p> <p>_____</p> <p>(Signature)</p> <p>_____</p> <p>(Date)</p> |
|--|---|

Dar es Salaam
25th January, 2021

IBRAHIM HAMIS JUMA
Chief Justice