**CHAPTER TWO.**

**CONCEPTUAL FRAME WORK ON WITCHCRAFT AND PROOF OF IT'S CRIME IN TANZANIA.**

**2.0 Introduction**

This chapter gives detail the conceptual frame work which includes the concept of the witchcraft and other related concepts which are relevant to this study. It gives the key meaning of the different terms used in this study

**2.1 Meaning of witchcraft**

According to witchcraft Act[[1]](#footnote-1) in section 2 defined "witchcraft" includes sorcery, enchantment, bewitching, the use of instrument of witchcraft, the purported exercise of any occult power and the purported possession of any occult knowledge.

The concept of witchcraft and the belief in its existence have existed throughout recorded history[[2]](#footnote-2) and due to deep rooted beliefs in witchcraft, witchcraft beliefs have not declined with independence and development level but it has rather flourished in unexpected ways and entwined itself in political action and political thinking[[3]](#footnote-3). It not easy to define the term because it is controversial and ambiguous shrouded in secrecy leading people to do things they do not understand but generally it can be defined as the practice of using supernatural powers to achieve a personal goal.[[4]](#footnote-4)Witchcraft practices include marketing of magical concoctions to ensure good luck, particularly with regard to economic advantages and occult shops around the world trade in such products.[[5]](#footnote-5)Recently in Africa particularly Tanzania, the preparations of such concoctions often entail the pervasive practice of killing people mainly PWA to acquire body parts and organs that are sold by underground organ-hunters and then used as ingredients for the potions[[6]](#footnote-6). Sometimes the practice is referred to as MUTI- MURDER OR MEDICINE MURDER, that is to say a practice of killing someone and, using his or her body parts in a medicine to bring power or luck to the killer.[[7]](#footnote-7)

Due to the adverse effect of witchcraft, there is a cry that witchcraft and its beliefs need to be eradicated before they eradicate our national developmental efforts our people[[8]](#footnote-8) and this had long been a concern of Africans throughout East and Central Africa. The practice teaches Africans that body parts of PWA hold some mystical and magical powers that can make people wealthy.[[9]](#footnote-9)

**2:3 Instrument of witchcraft**

According to witchcraft Act[[10]](#footnote-10) in section 2 defined "instrument of witchcraft" means anything which is used or intended to be used or is commonly used, or which is represented or generally believed to possess the power, to prevent or delay any person from doing any act which he may lawfully do, or to compel any person to do any act which he may lawfully refrain from doing, or to discover the person guilty of any alleged crime or other act of which complaint is made, or to cause death, injury or disease to any person or damage to any property, or to put any person in fear, or by supernatural means to produce any natural phenomena, and includes charms and medicines commonly used for any of the purposes aforesaid;

**2.4 Witchdoctors**

In African traditional knowledge witchdoctors are central characters in their respective communities because they are regarded as the link with ancestors.[[11]](#footnote-11) Ancestors are believed to be more powerful and having influence on their living descendants. Therefore, spiritual assistance is important in order for one to obtain good life on earth.[[12]](#footnote-12)Traditional healers, witchdoctors or herbalists in principle are the same thing in African societies and therefore, in most cases, the words are used interchangeably. However, now days many witch doctors prefer the term Traditional healer instead of witchdoctor the latter being a colonial term that may connote straight forward witchcraft rather than healing.[[13]](#footnote-13)In Tanzania, those who are registered into the Register of Traditional and alternative health are termed as Traditional health practitioners, meaning, any person who is recognized by the community in which he lives as competent to provide health care by using plants, animal, mineral substances and other methods based on social, cultural and religious background as well as on the knowledge, attitudes and beliefs that are prevalent in the community regarding physical, mental and social well-being and the cause of disease and disability[[14]](#footnote-14). Nonetheless, it has been reported that there are traditional healers who abuse their profession and engage in nefarious activities like killing or demanding for albino body parts. That is why there is no way to call the genuine herbalists or traditional healers.[[15]](#footnote-15)

According to Robinson witchdoctors are also spiritual specialists who attempt to counteract the powers of the witches who are believed to be causes of all undesirable situations in the community.[[16]](#footnote-16)**2:5 proof of the case.**

consider the law of evidence act[[17]](#footnote-17) provide the duty to who allege must proof, in section 110 which provide that, whoever desires any court to give judgment as to any legal right or liability dependent on the existence of fact which he asserts must prove that those facts exist and the person who is bound to prove the existence of any fact it is said that the burden of proof lies on that person , the law and their regulatory mechanism were meant to control the problem of witchcraft crimes, therefore the law of witchcraft is week to meet the proof of the witchcraft crimes since law failed to provide the ingredient or element of witchcraft crimes because law proved the offences and punishment but law did not provide how these are committed so this make a difficult to proof these crimes in the court unless the accused person plead guilty[[18]](#footnote-18). According to researcher. Proof is the evidence used to either support or ascertain that something happened or that a person’s statement is true. Proof is a requirement in any criminal trial. Criminal statutes have several element , each of which must be proven beyond a reasonable doubt. Absent such evidence, a person cannot be convicted of a crime. The burden of proof or rather, who is required to supply evidence proving that something is true–falls upon the prosecution in criminal cases[[19]](#footnote-19).

Proof is also a requirement in civil trials, though the standard proof needs to meet is not “beyond a reasonable doubt.” Instead, the standard of proof is by a preponderance of the evidence, which means it must be more likely than not that something happened. Generally, plaintiffs have the burden of proof and must supply evidence that the claims they allege are accurate, though sometimes the burden of proof switches to defendants[[20]](#footnote-20).

The plaintiff or prosecutor generally has the burden of proving the case, including every element of it. The defendant often has the burden of proving any defense. The trier of fact determines whether a party met the burden of proof at trial. The trier of fact would be a judge in a nonjury or bench trial. In a criminal case, the trier of fact is almost always a jury because of the right to a jury trial in the Sixth Amendment. Jurors are not legal experts, so the judge explains the burden of proof in jury instructions, which are a common source of appeal[[21]](#footnote-21).

**2.6 Conclusion**This chapter has presented the conceptual framework of this study by giving the meaning and definitions of various key terms used so as to make the reader or any consumer of this work understand it clearly. The same has also explained different perceptions available in the community towards witchcraft crimes. Finally, it discussed witchcraft and its consequences; one of it is the killing of PWA (people with albino).

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3. Mohammed, A. D. (2004), Conflict Between State and Legal Norms and Norms Underlying Popular Beliefs: Witchcraft in Africa as a Case Study, 14 DUKE J. COMP. & INT‟L L. 351, 355 [↑](#footnote-ref-3)
4. Tebbe, N . (2007). ” Witchcraft and Sacrifice, Liberal Democracy in Africa”,96 GEO , I.J 183,196. [↑](#footnote-ref-4)
5. Cohan, J.A ..(2011) . “The problem of Witchcraft Violence in Africa”, Suffolk University Law Review, Vol.XLIV p. 865. [↑](#footnote-ref-5)
6. Cohan, J.A ..(2011) . “The problem of Witchcraft Violence in Africa”, Suffolk University Law Review, Vol.XLIV p. 865. [↑](#footnote-ref-6)
7. Ibid [↑](#footnote-ref-7)
8. Tebbe N. (2007) “Witchcraft and Sacrifice, Liberal Democracy in Africa”,96 GEO.I.J 183,196. [↑](#footnote-ref-8)
9. Ibid [↑](#footnote-ref-9)
10. The witchcraft Act,[cap.18 RE 2002] [↑](#footnote-ref-10)
11. Røkke, M. (2004) „Witch‟ Hunt In Contemporary Tanzania Exploring Cultural And Structural Factors Leading To Violence Against Women In A Sukuma Village. Thesis submitted for fulfillment of requirement of Master Degree Program in Peace and Conflict Transformation of Centre for Peace Studies University of Tromsø Faculty of Social Sciences. P.90. [↑](#footnote-ref-11)
12. Westlund, D. (2006). African indigenous Religions and Disease Causation: From Spiritual Beings to Living Humans. Brill Leiden. Boston. P. 249 [↑](#footnote-ref-12)
13. Beck, A. (1979).” Traditional Healer in Tanzania”, A Journal of Opinion 9 (3): 2 – 5. [↑](#footnote-ref-13)
14. Section 3 of the Traditional Health and Alternative Medicine A ct,2002. [↑](#footnote-ref-14)
15. Tanner, R. (2010) Ideology and the killings of albinos in Tanzania: study in cultural relativities Anthropologists pp229-236. [↑](#footnote-ref-15)
16. Robinson,B.A,(2009) Witchcraft; Witchcraft in Asia and Sub-Saharan Africa .http//www religioustolerance.org/wic afri.htm. [↑](#footnote-ref-16)
17. The law of evidence act,[cap.6 RE 2019] [↑](#footnote-ref-17)
18. The penal code ,[ cap 16 RE 2019] [↑](#footnote-ref-18)
19. The law of evidence act ,[cap.16 RE2019] [↑](#footnote-ref-19)
20. Yourdictionary.com, “Definition of Burden of Proof,” accessed may 26, 2022, http://www.yourdictionary.com/burden-of-proof. [↑](#footnote-ref-20)
21. Findlaw.com, “The Insanity Defense among the States,” findlaw.com website, accessed May 26, 2022, http://criminal.findlaw.com/crimes/more-criminal-topics/insanity-defense/the-insanity-defense-among-the-states.html. [↑](#footnote-ref-21)