This task requires to evaluate the two provisions of the Tanzanian Penal code which raise contradiction and also raise debate among people, those provisions are Section 386(2) which provides that spouses can consire together also Section 387(2) which provides exception of neither spouses not to become an accessory after the fact for the crime committed by other spouse.

**Conspirancy**

Conspiracy is an agreement between two or more people to commit an illegal act, along with an intent to achieve the agreement's goal.[[1]](#footnote-1)

The law of Tanzania acknowledge that spouses can conspire which that stand is different to the common law which their stand is that spouses can not conspire together, S*ection 386(2)*[[2]](#footnote-2) clearly stated that a husband and wife can be guilty of consipire together in the case ***of* R v. Msuya**[[3]](#footnote-3) *The case involving a husband and wife who conspired defraud a local business both were found guility under section386(2) they emphasized that they have mutual agreement and intention,* from such provision we get meaning of conspirancy as agreement between two or more person to do unlawful act or lawful act by unlawful means with common intention as discuseed in the case of **Mulcahy v. The queen[[4]](#footnote-4)** *A conspirancy consist not merely in the intention of two or more, but in the agreement of two or more to do an lawful act by unlawful means*. Also in the case of **R v. Aspinall** [[5]](#footnote-5) *Brett J.A, said the crime of conspirancy is completely committed, if it is committed at all, the moment two or more have agreed that they will do, at once or at same future time, certain things, it is not necessary in oder to complete the offence that any one thing should be done beyond the agreement.*

**The reason behind why spouses can consipire together basing on Tanzanian Law.**

**Recognition of individual Agency,** section 387(2) of the penal code provide that the spouse my guilty for consiper together means that both partiner can act independently with the aim of committing a crime mean intention and agreement, agreement is actus reus of conspirancy . this recognition allgns with modern views on marriage as a partnership where both parties have equal agency in Tanzania spouse have equal status in criminal arena

**Deterrence against criminal behaviour,** due to the provision of section 386(2) of the pernal cod through conspirancy charged against spouse this deter from committing a crime this mean that it send a clear massage that engaging in illegal activities together will not shield either party from prosecution how ever the possibility of one spouse implicating another in criminal activity could strain marital relation and undermine trust within the partnership

**Accessory after the fact**

**I**s the person who assists someone who committed a crime, after the person has committed the crime, with knowledge that the person committed the crime and with the intent to help the person avoid arrest or punishment, this can rebuttable under provision of *Section 387(2)*[[6]](#footnote-6) where neither spouses can not become an accessory after the fact to an offence of which other spouse is guilty by receiving or assisting him/her in order to escape punishment in the case ***R v. Muhando[[7]](#footnote-7)*** *in this case the wife was acquitted of being an accessory after her husband committed theft because she had no prior knowledge or involvement in this actions.* This two provision it seek to understand the legal implication and debates surrounding these provision compared to common law the rationale behind this section or the reason for this provision to be established as follow

**Critical evaluation of section 387(2) of the penal code this section established dew to the following reason**

**Potential injustice** *Section 387(2)*[[8]](#footnote-8) provides for validity of wife to assist her husband to escape punishment when he has committed an offence, from this provision we can see injustice pontential the section legally protect the spouse were are not taken accessory after the fact when they help their spouse to escape punishment committed a crime can lead to unjust the law protect spouse due to their relation ship status

**Avoidance of conflict with Domestic privacy**, section 387(2) provide this section for protect privacy of the marriage where the section doest not allow the wife to testsify against his wife vise versa regarding the past offence, the wife does not become accssesory after the fact for the offence his wife committed assist her in oder to escape punishment

**Preservation of maritaly cohesion**, section 387(2) of the penal code prevent the spouse to be accessory after the fact the law seek to prevent famillal integrity and encourage and encourage support between partner during time of crises

**REFERENCE**

**STATUES**

Penal code cap 16 R.E 2022

**CASES**

R v. Msuya [1980]123

R v. Muhando[1995] TLR

Mulcahy v. The queen,L.R.3 H.L.306

R v.Aspinall(1876),2Q.B.D.48

**BOOKS**

**Online Material**

https://www.law.cornell.edu/wex/conspiracy#:~:text=Conspiracy%20is%20an%20agreement%20between,to%20achieve%20the%20agreement's%20goal.

1. *https://www.law.cornell.edu/wex/conspiracy#:~:text=Conspiracy%20is%20an%20agreement%20between,to%20achieve%20the%20agreement's%20goal. Retrieved 16th Dec 2024 at 8:01am* [↑](#footnote-ref-1)
2. Penal Code [Cap 16 RE 2022] [↑](#footnote-ref-2)
3. [1980] TLR 123 [↑](#footnote-ref-3)
4. L.R.3 H.L.306 [↑](#footnote-ref-4)
5. (1876),2Q.B.D 48 [↑](#footnote-ref-5)
6. Penal Code [Cap 16 RE 2022] [↑](#footnote-ref-6)
7. [1995] TLR45 [↑](#footnote-ref-7)
8. Penal Code [Cap 16 RE 2022] [↑](#footnote-ref-8)