

**IN THE RESIDENT MAGISTRATE'S COURT OF TANGA  
AT TANGA.**

**(EXTENDED JURISDICTION)**

**P.C. MKEHA – SRM.**

**CRIMINAL SESSION CASE NO.11 OF 2013**

**THE REPUBLIC**

**VERSUS**

**HUSSEIN AYUBU @ SHEKI**

*Date of last order: 22/07/2013*

*Date of Ruling: 22/07/2013*

**RULING**

**P.C. MKEHA – SRM.**

In this ruling, an issue of considerable legal importance arises, namely whether a Resident Magistrate sitting at a District Court is a justice of the peace. Equally important, is yet another issue, namely whether there are minimum standards to be observed by justices of the peace who record confessional statements of persons suspected to have committed offences. The issues have arisen in this way.

On the 1<sup>st</sup> day of June, 2007, a Resident Magistrate sitting at Lushoto District Court house, recorded what is now named to be a confession statement of the accused in this case one, Hussein Ayubu

@ Sheki. While recording that statement, he believed that, he was by then exercising his powers as a justice of the peace assigned to a district court. Then on the 19<sup>th</sup> day of July, 2013, the prosecution examined before this court, a witness before whom, the accused is said to have confessed. Heavy reliance was put on the said confessional statement thus, the prosecution sought to tender the same as an exhibit before this court. The defence counsel, Mr. Mlawa learned advocate, rose to object. The substance of his objection was that, when the statement was being taken the accused's mind was not free. The learned advocate added that, it appears that, his client was forced to give that statement. Following that objection, assessors were withdrawn from proceedings. A trial within a trial was then conducted. In support of the said statement, the prosecution examined two witnesses.

TW1 told this court that, on the 1<sup>st</sup> day of June 2007, while exercising his powers as a justice of the peace, got an opportunity to record an extra judicial statement of a certain suspect who was brought before him (before TW1) by Sgt. Kedmund (as he then was). TW1 could recall that, the accused before this court was the person

who appeared before him on the 1<sup>st</sup> day of June, 2007 in view of confessing. Before doing anything with the accused, the witness asked Sgt. Kedmund to leave the court premises so that the accused could remain free. Sgt. Kedmund obliged. According to the witness, the suspect was in a normal state. The witness is said to have asked the accused whether he was willing to give his statement. The accused replied that he was ready. That was after the witness had introduced himself to the accused. The witness further asked the accused whether he had been forced, influenced or tortured. The accused is said to have replied that, he had not been forced, influenced or tortured. The accused is said to have insisted that, he was free. The witness went on to tell this court that, he also informed the accused of the legal consequences of the confession he was about to give if tendered before a court of law. The accused is said to have replied that he was aware of the said legal consequences of his statement being tendered in court in a case against him. According to the witness, the accused elected to make that statement. Before taking the statement, the witness satisfied himself that the accused was in a good state of health and mind by words, actions and

appearance. The witness inspected the accused's body and found the same to have no injuries or bruises whatsoever. After the said exercise, the witness was satisfied that, what he was about to receive was really a voluntary statement from the accused. To signify that legal requirements governing recording of a confession statements had been complied with, the witness and the accused signed. Thereafter, the accused narrated to the witness the way he involved himself in the task of killing the deceased. Having taken the accused's statement, the witness read it over to him (the accused). The accused was satisfied that the witness correctly recorded the said statement. The accused signed the statement using his own fingerprint. The witness too, recorded a certification note to the effect that he had recorded the said statement of the accused in the manner given to him by the accused person. He added that the said statement was a voluntary one. The witness signed as well.

**" Are you a justice of the peace?."** The Learned defence counsel pursued his curiosity. To that question, the witness responded that, while recording the said confessional statement, he held two capacities namely, as a Resident Magistrate and as a justice

of the peace as well. The witness insisted that, reliance was put on the wording of section 57 of the Magistrates' Courts Act. When the Learned defence Counsel asked as to whether there is a prescribed form consisting of questions which the justices of the peace are supposed to put to suspects whenever they appear before them in view of confessing, the witness responded that, even if there is such a form, it does not prescribe the type of questions to be asked.

TW2. Insp. Kedmund happened to be the person who took the accused before a resident magistrate to have his extra judicial statement recorded. According to this witness when he took the accused before a justice of the peace, the latter was in his normal state of health. The accused had not been injured in any way. The accused had neither been tortured. The witness further stated that, after he had introduced himself to the justice of the peace, he left the court premises to leave the accused free. The witness and his fellow police officers moved at a distance of about 100 metres from the court building. Insp Kedmund stated that, he never returned until when he got instructions from the court clerk where upon he went back to the court building to collect the accused's statement. He

received the same while enclosed in a sealed envelope and took the same to the addressee i.e. the OC-CID. He further remanded the accused.

Responding to questions put to him by the learned defence counsel, he was of the view that, all Magistrates, irrespective of their cadres, are justices of the peace. He also stated that, he carried no letter with him from the OC-CID to the justice of the peace. He denied having witnessed the act of the accused rendering his statement to the justice of the peace. As to PF3 which appeared to have been issued to the accused, the witness stated that, the same had been issued two days after the accused had confessed hence it could not affect the accused's voluntary confession before a justice of the peace.

Hussein Ayubu Sheki appeared as the only defence witness in respect of the trial within a trial. He renounced having ever made any statement before the justice of the peace. The accused stated, when he declined to give statement to the justice of the peace, the latter opted to copy the contents on some pieces of paper which he had received from Sgt. Kedmund and adopted the same as the accused's

confessional statement. The accused added that, when he refused to sign the said statement, Sgt. Kedmund was called upon to re-open his sore and out of pain, he involuntarily signed.

Responding to questions put to him by the Learned State Attorney, the accused stated that, since his eyes were closed on his way to meet the justice of the peace, he identified the police vehicle as he was being taken back to the police station. He also stated that there was no threat inside the Magistrate's office. He however insisted that, he never made any statement before a justice of the peace.

Following the legal battle as explained above, I now have to make a finding, as to whether the extra judicial statement recorded by a Resident Magistrate sitting at Lushoto District Court house is admissible before this court or not. Happily, the Magistrates' Courts Act, Chapter eleven (11) of the Laws, is to my aid.

Section 51 of the Magistrates' Courts Act provides as here under:

**(1) Every specified officer of a district, town,**

*municipal or city council shall be a justice of the peace for the district within which such council has jurisdiction.*

**(2)** *The Minister may appoint any fit and proper person to be a justice of the peace for the district in which such person is ordinarily resident.*

**(3)** *Notwithstanding the provisions of subsection (1) or (2) of this section, the Minister may, by Notice published in the Gazette, in any case in which he considers such an appointment to be desirable, appoint a specified officer or person appointed a justice of the peace under subsection (2) to be a justice of the peace for more than one district.*

**(4)** *In this section, "specified officer" means the Secretary to the district, town, municipal or city council and includes the Secretary to a divisional*



***committee there of.***

Section 52 of the Magistrates' Courts Act provides that, the appropriate judicial authority shall assign every justice of the peace to a primary or district court house in the district for which he is appointed. The term "appropriate judicial authority" means the Chief Justice and any person appointed by the Chief Justice under section 15 to be, or to perform the functions of, the appropriate judicial authority for the relevant purpose. The said definition is provided under section 2 of the Magistrates' Courts Act.

Section 58 of the Magistrates' Courts Act, as on the 1<sup>st</sup> day of June, 2007 provided as here under:

- (1) ***A primary court magistrate shall be a justice of the peace for the district for which the primary court to which he is assigned is established and, in his capacity as a justice of the peace he is hereby assigned to every district court house therein.***
- (2) ***The exercise of the powers or functions of justice of the peace by a primary court***

***magistrate shall not be called in question solely on the grounds that, in the exercise of such powers or functions, he purported to act as a primary court magistrate.***

As on the 1<sup>st</sup> day of June, 2007 section 57 of the Magistrates' Courts Act provided as here under:

In addition to the powers conferred by this Act on a justice of the peace a justice of the peace assigned to a district court house:

- (a) may hear, take and record the confessions of persons in the custody of a police officer in the same manner as a magistrate may hear, take and record such confessions.***
- (b) shall have and exercise the powers, functions and duties conferred on a justice of the peace assigned to a district court house by any other written law.***

A careful reading of the above cited provisions of the law reveals that there are two categories of Justices of the Peace. In the first category there are those justices of the peace assigned to District Courts. In the second category there are those justices of the peace assigned to primary courts. Each category is further subdivided into two. **Who are justices assigned to District Courts?**

(i) All Primary Court Magistrates are justices assigned to the District Court houses of the District wherein their Primary Court is established. (ii) The Executive Officers of District Councils if assigned to a District Court house. **And, who are justices assigned to Primary Courts?**

(i) The Chief Executive Officers of every District Council, the Chief Executive Officers of every Divisional Committee of a District Council and all Assistant Executive or Divisional Executive Officers (ii) Such other persons as the Minister for justice may appoint.

In terms of section 52 of the Magistrates' Courts Act, the Chief Justice, and some of the appointees of the Chief Justice under section 15 of the Act i.e MCA, are empowered to perform the task of

assigning every justice of the peace to either primary or district court house in the district which he is appointed.

**The Black's Law Dictionary**, 8<sup>th</sup> edn, pg. 882 defines the words " Justice of the peace" to mean a local judicial officer having jurisdiction over minor criminal offences and minor civil disputes and authority to perform routine civil functions (such as administering oaths and performing marriage ceremonies).

Owing to the general functions of justices of the peace as prescribed under sections 54,55 and 56 of the Magistrates' Courts Act, it can not be said that a Resident Magistrate sitting at a District court was a justice of the peace envisaged under sections 57 and 58 of the Magistrates' Courts Act before the coming into force of G.N. No. 3 of 2013 which came into force on the 10<sup>th</sup> May, 2013. I therefore hold that, as on the 1<sup>st</sup> day of June, 2007 a Resident Magistrate sitting at the District Court of Lushoto was not a justice of the peace.

I am however mindful of the recent amendments to the Magistrates' Courts Act i.e Amendment of part VI and section 58 of the Magistrates' Courts Act. The amendments are contained in

G.N. NO.3 of 2013 which as I earlier hinted, came into force on the 10<sup>th</sup> May, 2013. Following that amendment, a Resident Magistrate working in the primary court shall also be a justice of the peace for the district for which the primary court to which he is assigned and, in his capacity as a justice of the peace he is assigned to every district court house therein.

In the course of conducting trial within a trial the defence counsel cross examined the prosecution witness in a manner which suggested that the said confession statement if any, was not recorded in accordance with the required standards. The prosecution, through its witnesses, maintained the position that, there is no any standard form prescribing the type of questions to be put to a suspect who appears before a justice of the peace to have his or her confession recorded. I am in agreement with the prosecution that there is no any standard form consisting of the exhaustive list of questions which should be adopted by justices of the peace whenever recording confessional statements of suspects. However, it can not be disputed that the following, are expected to form part of the record of a voluntary statement before a justice of the peace:

- (i) The manner in which a justice of the peace received information to the effect that the accused, who is under arrest in connection with an alleged offence, wishes to make a voluntary statement to a justice of the peace;***
- (ii) The name of the Court house at which the justice of the peace who records the confession is assigned;***
- (iii) The names of the accused person;***
- (iv) The date and time at which the justice of the peace received the accused before him or her;***
- (v) The alleged offence;***
- (vi) Statement to show that the police are directed to leave the Court house to a distance where proceedings before the justice of the peace can not be seen or heard;***

- (vii) If the accused does not understand the language of the justice of the peace a duly sworn or affirmed interpreter should be engaged;***
- (viii) The accused should be informed that he/she is before a justice of the peace and asked if he/she wishes to say anything. If he/she says "yes," the exercise continues but, if he/she says "no" he/she should be returned at once to police custody;***
- (ix) With the accused's consent, the justice of the peace should examine the accused's body. The result of the said examination should be recorded;***
- (x) The record should state whether any marks, bruises or cuts are noted and whether they appear to be old or***

*recently caused;*

- (xi)** *The justice of the peace should ask the accused, on what day and at what time he/she was arrested by the police;*
- (xii)** *An answer to the above question should be recorded;*
- (xiii)** *The justice should also ask the accused, at what place he/she was arrested;*
- (xiv)** *An answer to that question should be recorded;*
- (xv)** *The justice of the peace should ask the accused, the place at which he/she was taken after the arrest and the place at which he/she slept until when the accused appeared before the justice of the peace;*
- (xvi)** *An answer to that question should be recorded;*
- (xvii)** *The justice of the peace should inform*



*the accused that he/she is free to make a statement or not, as he/she pleases. He should also ask the accused if has any person by any threat promise or violence persuaded him or her to go before the justice of the peace to make a statement;*

*(xviii) An answer to that question should be recorded;*

*(xiv) The justice of the peace should again ask the accused whether he or she really wish to make a statement to a justice of the peace on his or her own free will;*

*(xx) An answer to that question should be recorded;*

*(xxi) The justice of the peace should also inform the accused the fact that, the statement if made, may be used*

*as evidence if brought to trial. The justice should ask the accused if he/she has that knowledge;*

*(xxii) An answer to that question should be recorded;*

*(xxiii) A statement to the effect that the justice of the peace is satisfied that the accused is a free agent and that the statement he/she makes is a voluntary one. Such a statement should be signed and dated by the justice of the peace;*

*(xxiv) The actual statement of the accused, i.e, the accused's own words should be recorded. The accused should sign the statement;*

*(xxv) A statement to the effect that, before the accused signed the statement, the same was read over aloud to him*