

**IN THE HIGH COURT OF TANZANIA
DAR ES SALAAM DISTRICT REGISTRY
AT DAR ES SALAAM**

CRIMINAL SESSIONS CASE NO. 13 OF 2021

REPUBLIC

Versus

- 1. KHALID ALMAS MWINYI @ BANYATA**
- 2. RAHMA ALMAS MWINYI @ BABY @ RAHMA ALMAS
IDDI**
- 3. NDUIMANA OGISTE @ JONAS ZEBEDAYO @
MCHUNGAJI @ NDAYISHEMEZE ZEBEDE @
NDAISHIME ZEBEDAYO @ OMARI HASSAN**
- 4. GODFREY PETER SALAMBA**
- 5. CHAMBIE JUMA ALLY**
- 6. ALLAN ELIKANA MAFUE**
- 7. ISMAIL ISSAH MOHAMED @ MACHIPS**
- 8. LEONARD PHILIPO MAKOI**
- 9. AYOUB SELEMAN KIHOLI**
- 10. JOSEPH ALEXANDER LUKOA**
- 11. GAUDENCE JAMES MATEMU**
- 12. ABUU OMARY MKINGIE**
- 13. HABONIMANA AUGUSTIN NYANDWI @ OGISTEE**

14. MICHAEL DAUD KWAVAVA

15. EMMANUEL THOMAS SONDE

16. KELVIN ATHANAS SOKO

17. SAMIA SALEH HUJAT

18. ALMAS SWEDI @ MALCOM

Date of last Order: 15/03/20202

Date of Ruling: 15/03/2022

RULING

MGONYA, J.

Before the court is the Prosecution witness **PW3 AC**. In the course of his testimony the witness introduced himself as a Police Officer working with the Police Force at its Forensic Bureau particularly in the Ballistic and Explosion Department since 2004. His main duty being investigating different weapons which have been expended in criminal episodes. From the above introduction, it is my firm conclusion that the witness before the court is a Ballistic Expert.

In the course of his testimony, the witness informed the court that on 13th December 2017, while at work, he received two letters from the RCO's Office at Kinondoni. Together with those letters, the witness received some specimens in a bag containing two guns UZI gun and riffle, 162 small bullets, 5 big bullets, bullet heads, a

hand grenade (hand bomb), and some spent cartridges for examination. Upon completion of the said examination, the witness prepared a Ballistic Report.

In the cause of his testimony and particularly when this witness wanted to tender some exhibits for evidence which included the Ballistic Report he prepared, including some explosive items in nature as mentioned above, all the entire Defence team had no objection in tendering of the said reports and other exhibits save for Mr. **Mluge Karoli** and **Majura Magafu** learned Advocates whom both categorically objected on the admission of the weapons and other related items.

Briefly, the objection mainly laid on the grounds that the witness is not competent in tendering those items for evidence as he does not know the source of the same and its relevance to the case at hand. Further, it is the Defense concern that the witness so far has failed to show the connection of those items with the offences charged against the accused before the court. In support of this assertion, Mr. Magafu cited the case of the ***DPP VS. SHARIF S/O MOHAMED ATHUMANI & 6 OTHERS, in Criminal Appeal No. 74 of 2016 Court of Appeal sitting at Arusha.***

In response, briefly Prosecution were of the view that the witness is competent to tender the same as he was involved in investigation of the same. Hence he has knowledge of the said items which are prayed to be admitted for evidence. In support of this fact the case of ***DEUS JOAS KILALA @ DEO VS. THE REPUBLIC, Criminal Appeal No. 191 of 2018.***

I am aware that in criminal cases, the most important factor in determining whether a piece of evidence is admissible is its **relevance** to the proceeding. "Relevant evidence" includes any evidence that would make the existence of a **material fact** "more probable or less probable than it would be without the evidence." As a **general rule**, relevant evidence is **admissible**, while evidence deemed irrelevant is not. Material fact is a fact relevant to proving or disproving an element of the crime at hand or otherwise having a legitimate influence on the case at hand.

Further, Evidence must also be sufficiently reliable to be admitted at trial. Evidence from expert witnesses, which might be used to establish the validity of or to challenge ballistics, or computer forensics, to name but a few, must meet standards defined in our jurisprudence through case law / precedents.

In the instant case, the witness has demonstrated that he had come into contact with the above mentioned stuffs by seeing,

touching, analyzing the contents therein and finally wrote a Report. So, what he is now intending to produce is something which is within his knowledge and possession at one point in time. His evidence is direct oral evidence falling **under S. 62 (1) (a) and (c) of the Evidence Act, Cap. 6 [R.E. 2019]**.

He is a person who at one point in time those items were at his possession despite the fact that he was not an original custodian of this subject matter of trial. The test for tendering the exhibit therefore is whether the witness was in possession of the same, though shortly. So, the witness is legally capable of tendering the intended exhibits in question provided he has the knowledge of those things in question. The above principle is well founded in the case of the ***DPP Vs. MIRZAI PIRBAKHSHI @ HADJI AND 3 OTHERS, Criminal Appeal No. 493 of 2016.***

Referring to the case before us and the objection by the Defence, I understand that there might be the fear that the prayed evidence to be tendered for evidence might be against the accused persons as the same might have been obtained in a warrantless search of someone else's home. This won't be the case as in my observation it is obvious that there will be later other witnesses who will come and testify to the effect of its source and those who are concerned by the said evidence. Thus the said evidence will not

by any means be subject to Defence suppression by the Prosecution. Thus, I hereby allow the said items to be admitted for evidence as prayed. Consequently, the objection raised by Defence is accordingly **overruled**.

It is so ordered.



A handwritten signature in blue ink, appearing to read "L. E. Mgonya".

L. E. MGONYA

JUDGE

15/3/2022