

**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

RULING

MGONYA, J.

Date of last Order: 03 /8/2022

Date of Ruling: 04/8/2022

MGONYA, J.

In the cause of trial, before the court, **PW27 BA** a Police Officer who alleged to have interrogated and recorded **LEONARD PHILIP MAKOI**, the 8th Accused person's caution statement, when intending to tender the said caution statement so as to make it part and parcel of the Prosecution case, encountered 2 points of objection as follows:

- 1. That the caution part of the statement has no signature, start and finishing time;***
- 2. That, the caution statement has insufficient particulars contrary to section 53 (b) of the Criminal Procedure Act Cap. 20 [R. E. 2019].***

Submitting on the objections raised **Mr. Karoli Mluge** Learned Counsel, submitting for the 8th accused stated that the statement had been taken without adhering to the

requirements of **section 52 (2) of the Criminal Procedure Act Cap. 20 [R. E. 2019]**, herein referred to as the CPA which wants the recorder to the statement to write starting time and finishing time. The objection which was also supported by the 8th accused's Advocate, learned counsel **Ms. Modesta Medard** who further submitted that **section 52 (3) of the CPA** states where the above law has not been adhered to, then it will be considered that the accused was not cautioned.

Mr. Majura Magafu Learned Counsel also submitting for the for the 8th accused, submitted that there was no sufficient information given to the accused person on the alleged offence contrary to **section 53 (b) of the CPA**; particularly the name of the deceased, where the murder took place etc taking into consideration that the statement was taken under **section 57 of CPA**.

In response **Mr. Yamiko Mlekano PSA** for the Prosecution stated that, for the 8th accused objection **section 53 of the CPA** that the name of the deceased and the place of murder was not mentioned, he was of the view that **section 53 (b) of the Criminal Procedure Act** the law does not require to mention the name of the deceased neither the place of murder, as the accused may know the plan to the offence but may not know the name of the person who the plan is plotted against.

Further, on the contravention of **section 52 (2) of the CPA Mr. Mlekano PSA** submitted that **section 64 of the Interpretation of Laws Act Cap. 1 [R.E 2019]** states about deviation of prescribed forms which cures this matter at hand. The case of ***CHACHA JEREMIAH MULIRI AND 3 OTHERS VS REPUBLIC, Criminal Appeal No. 551 of 2015 CAT*** was cited to support this contention. Whereas it was held that '**not every contravention goes to the exclusion of the evidence**'.

From the above, there are 2 issues for determination;

- 1. Whether the lack of date, signature, start and finishing time of the cautioned part in the Caution statement is fatal for admissibility of the said statement;***
- 2. Whether the caution statement is inadmissible for insufficient particulars;***

Regarding to the **first point of objection** as to whether the caution part of the statement has no date, signature, start and finishing time; contrary to **section 52 (2) of CPA**, it is my observation that **section 64 of the Interpretation Act Cap.1 [R.E. 2019]**, cures the defect as I have noted there are different kinds of forms where some provides a place to fill the mentioned particulars and some do not have the same. However, the most important issue is to observe if the said omission causes any

injustice to the accused. It is my further observation that the omission at that particular part does not occasion any injustice to the accused person **hence this point of objection is baseless.**

Lastly on the second issue as to whether the caution statement has insufficient particulars, the Defense Counsel before this Court raised in this proceeding averred that the caution statement was contrary to **section 53 (b) of the Criminal Procedure Act.** It was further added that the said caution statement had no sufficient information of the murder; and that the same ought to comply also to **section 132 of the CPA** that when a person is charged the important information to the offence have to be mentioned. It is my understanding that **section 53 (b)** does not require the name of the victim to be stated. Either the provisions of **section 132 of CPA** are requirements for contents of a charge sheet, whereby at the time of writing the accused caution statement the 8th was not charged yet. Hence **section 132 of the CPA** does not apply to the circumstance at hand.

The above objection is purely on point of law that directs this Court to visit the said provision and the same states that;

53. Where a person is under restraint, a police officer shall not ask him any questions, or ask him

to do anything, for a purpose connected with the investigation of an offence, unless-
(b) the person has been informed by a police officer, in a language in which he is fluent, in writing and, if practicable, orally, of the fact that he is under restraint and of the offence in respect of which he is under restraint.

The provision above from its wording requires a police officer before interrogation of a person under constraint first bring to his knowledge until the person under constraint is informed in a language, he understands why he is under constrained and the offence levied on him. Taking a glance of the caution statement in question at page one contains the offence the accused was alleged to be under constraint for at that particular time. And question of the offence he was alleged to have committed were put to him after he was informed according to the requirement of **section 53(b) supra**. Naming the deceased as it is in the circumstance of this case as required by the Defense Counsel is not a mandatory requirement. Taking into consideration that a Cautioned Statement contains statements averred by the Accused. So, it is obvious he will narrate what is in his knowledge and one cannot put words in his mouth of matters he has not narrated during the interrogation. And that the purpose of Section **53 (b) of the**

CPA is to enable the accused to know reason for being under restraint. Having said the above, I find this **objection holds no water.**

In the event therefore and from the above, this Court find the objections raised lacks merits and are hereby overruled. The cautioned statement is to be admitted for evidence as prayed.

It is so ordered.



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

L. E. MGONYA

JUDGE

05/08/2022