

**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**

*Date of last Order: 25/07/2022*

*Date of Ruling: 25/07/2022*

**MGONYA, J.**

In the cause of cross examination of **PW1 – II** in the trial within trial proceedings, the defence Counsel for the 4<sup>th</sup> Accused person herein one **GODFREY PETER SALAMBA** whose caution statement is in issue his Advocate, Mr. Abdulaziz prayed the court to admit the witness statement which he confessed to have recorded the 4<sup>th</sup> Accused person's statement on 18/01/2018. The prayer was initially made under **section 166 of the Evidence, Act Cap. 6 [R. E. 2019]** have in to be referred as TEA.

Responding to the objection, from the Prosecution team Mr. Mlekano, PSA, find his resque to **Section 154** to be read together with **section 164 (1) of the Evidence Act**.

In fact, after I have gone through the Evidence Act generally, the proper section under the given situation and for the purpose

stated by Mr. Abdulaziz, is **Section 154** as well stated by Mr. Mlekano, PSA.

However, before the prayer via this section there are some principle requirement to be observed by the person who prays the statement to be tendered for evidence as in this case.

Before I proceed, let me quote the said section. The same provides:

***"154. A witness may be cross-examined on previous statements made by him in writing or reduced into writing, and relevant to matters in question, without such writing being shown to him or being proved, but if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him".***

From the wording of the above section, the crucial requirement to be observed for the person who is requesting for the admissibility of the document in issue is to:

***"call to those parts of it which are to be used for the propose of contradicting the witness"***

This requirement was not adhered to. Instead the witness was astonished by the question as to whether he would like or not his statement taken /admitted for evidence. Despite the fact that, the learned counsel did not declare clearly that he wants to contradict him on a particular area, he was compelled by law to do so. That was to instill the knowledge to the witness as to what was the issue in the statement. This is the reason why he hesitated in a 1<sup>st</sup> place to admit the counsel's request; of which later turned into a prayer before the court under the above stated sections.

That is why the witness attention to the specific parts of the statement has to be demonstrated.

The procedure for impending witness by his previous writing has been well stated in the case of ***LILIAN JESUS FORTES V/S THE REPUBLIC*** Criminal Appeal No. 151 of 2018 whereby Kitusi J. A. at page 25 of the Judgment stated three procedures to be complied, which are: -

**1<sup>st</sup>**, the previous statement must be read to him,

**2<sup>nd</sup>**, the attention of the witness must be drawn to those parts which are intended to demonstrate contradictions; and

**3<sup>rd</sup>**, the statement should be tendered in evidence.

Those are the major three principles of which none of them was adhered to in our given circumstances.

In the end result, as the prayer was later made under section **154** of the **TEA**, the prayer cannot succeed under the given circumstances. **The prayer for admissibility of the document is accordingly denied.** Let the cross examination proceed accordingly.

It is so ordered.



**L. E. MGONYA**

**JUDGE**

**25/7/2022**