

**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: 26/7/2022

Date of Ruling: 27/7/2022

R U L I N G

MGONYA, J.

In the cause of trial, before the court, **PW25 AY** a Police Officer who alleged to have interrogated and recorded **GODFREY PETER SALAMBA**, the 4th 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 an objection from the 4th accused's Advocate, learned counsel Mr. Abdulaziz. The objection was laid down on three point as herein below:

The 1st objection was to the effect that the accused denied absolutely to have been interrogated and caution statement taken from him;

2nd that on 18th January 2018 he was not at Oysterbay Police Station; and

3rd that the signature in the alleged caution statement does not belong to him.

From the above controversy between the Prosecution witness and the 4th Accused claims, the trial within trial was conducted.

Prosecution had three witnesses to prove the above facts. The 1st was the Police Office Officer who alleged to have interrogated the accused and record his caution statement. Whereas the witness informed the court that on 18th January 2018 around 22:45 Hrs. he was directed by the Kinondoni RCO to interrogate the 4th accused one **GODFREY PETER SALAMBA** and record his caution statement. It is his assertion that he adhered to all legal procedures towards caution statement writing and finally the Accused signed the said statement by his own signature. The said caution statement was admitted as ID 1.

The second witness was the Police Officer who by 2018 was the OCS at Oysterbay Police Station. This witness testified to the effect that he was the custodian of all the Police registers at the station, the Detention Register inclusive. This witness through **Exh. P1** the Detention Register 2018 showed that the 4th Accused was at the Oysterbay Police Station as from 19th January 2018 at **00:36 Hrs** up **14:30 Hrs** where he was removed from custody and headed to Arusha Region for further investigation.

The third prosecution witness was the Police Officer who testified to the effect that he was the one who arrested the 4th Accused person herein around 22:15 Hrs at Tabata Garage on 18th January 2018 upon an order from Kinondoni RCO. The witness testified to the effect that after he has arrested the accused, he brought him to Oysterbay Police Station and handed him to Kinondoni RCO around 22: 45 Hrs.

Defence had only one witness the 4th Accused himself. The witness denied to have been arrested on 18th January as alleged, instead, he testified to the effect that on 5th January 2018 he was hijacked by two Police Officers that he recognized and familiar too. He was then taken to unknown place of which later he came to know was Wami Police Station where he stayed there for some days without any food and he was also tortured and forced to reveal where he had hidden the laptops that were stolen. The witness further revealed that it was until 23rd of February he was arraigned before Kisutu RM's Court where the charge for Murder was read to him with other four accused persons who were strangers to him. In principle, the witness denied totally to have been at Oysterbay on 18th of January 2018 and his statement recorded.

In determining this matter, I have to declare that the controversy between Prosecution witnesses and the sole

Defence witness lies on the evidentiary standards and burden of proof in legal proceedings, which always reflect the parties to adhere to important rules known as evidentiary standards and burdens of proof. These rules determine which party is responsible for putting forth enough evidence to either prove or defeat a particular claim and the amount of evidence necessary to accomplish that goal. The burden of proof determines which party is responsible for putting forth evidence and the level of evidence they must provide in order to prevail on their claim.

It is a requirement of law under the **Evidence Act Cap. 6 [R. E. 2019]** that a party that states on existence of facts must prove that those facts exist. Such existence can be proved by putting forth evidence in the form of witness testimony or documents.

Referring back to our case, the Sole defence witness denied the fact that on 18th January 2018 was at Oysterbay Police Station, neither interrogated and recorded his cautioned statement. That assertion was rebutted by PW2 the then OCS of Oysterbay Police Station and custodian of all the Registers thereto during his tenure (2018) who tendered for evidence before the court the Oysternay Police Detension Register P.F. 20 (2018). It was evidenced through the same that the 4th Accused one GODFREY PETER was registered in the said Register and

officially detained on 19th January 2018 at 00:36 Hrs. Further, the Register shows that on the same day around 11: 25 Hrs in the morning the said accused was removed from the cell for further interrogation at the station. He was then returned at 13:02 whereby for the second time he was once again removed from cell at 14:30 Hrs where he was needed to travel to Arusha for further investigation.

From the above evidence via **Exh. P1** to the proceedings it is evident that the 4th Accused person was at Oysterbay Police Station on **19th January 2018** before he travelled to Arusha. This evidence was collaborated with the testimony of PW3 the arresting officer who testified that he arrested the Accused whom he identified before the court at Tabata Garage on 18th of January 2018. This witness admitted to arrest the Accused around **22:00 Hrs** and handed the same to RCO Kinondoni around **22:45 Hrs** as ordered. He also testified to have witnessed the accused being handled to a Police officer who was ordered to interrogate the 4th accused person and write his caution statement. Again this testimony was further corroborated by PW1 the Officer who testified to have interrogated the 4th accused person whom he identified in court and write his caution statement.

To counter the above Prosecution testimony, the 4th accused person testifying as DW1 was supposed to rebut the sad testimony by tangible evidence. What was testified by DW1 was of course a different scenario and absolutely different from the Prosecution allegation, but verbally without any evidence.

Tanzania Police Force like any other Police Organs in the world has its machineries in Policing matters, these includes the remand and detention affairs. It is the DW1's assertion that ever since he has been hijacked by those two men, to date, he has never been recorded in any Police Station's Register including Wami the one he mentioned. I have to remind the accused that he is facing a Murder charge same as others herein and that he has been in remand for about four years. There is no way that he can be apprehended on this serious case without being interrogated neither his statement be recorded. That could have been against the Police Rules and Human Rights.

The accused had a chance of calling any person whom he could testify in his favour on what he testified. Example, he could have called his wife who could have come and testify that on those particular days (about one month) he went missing and he tried even to report to some recognised authorities such as Police. However, that was not the case. For someone missing for

about one month's time without his whereabouts to be known, it is something serious.

Further, I have to refer to PW2's testimony that apart from reading the particulars of 19th January 2018 detention register and sign thereto, he physically saw the Accused as testified before the court. One of his duties stated before this court was to inspect the culprits in remand. If the accused was in remand without appearing in Detention Register, or otherwise that the accused was in the Register without his physical presence, I am sure that would have come to the knowledge of PW2. Since PW2 is neither the arresting Officer nor the one who interrogated him and recorded his caution statement. Out that situation, particularly that he was detained without being recorded in the Detention Register, PW2 could have ordered his immediate release.

Gauging the strength of the evidence between the Prosecution case and the Defence case in these proceedings, it is my firm observation and conviction that the evidence brought by Prosecution is tangible and reasonable. A case has to be proved in all possible ways. Despite that fact all witnesses in this case as all others, have testified under oath, mere words from the Defence witness without any evidence cannot defeat the corroborated testimonies from the three Prosecution witnesses

who all were acting in the cause of their work without any interest.

In the end result, **the objection against the tendering of the 4th Accused cautioned statement is overruled and I hereby proceed to admit the same for evidence as prayed.**

It is so ordered.



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

L. E. MGONYA

JUDGE

27/7/2022