

**IN THE HIGH COURT OF TANZANIA**  
**IN THE DISTRICT REGISTRY OF DODOMA**  
**AT KONDOA**  
**CRIMINAL SESSIONS CASE NO. 146 OF 2020**  
**THE REPUBLIC**  
**VERSUS**  
**BEATUS ALOYCE MWISAKA**

\*\*\*\*\*

**RULING**

**25<sup>th</sup> November, 2022**

**MDEMU, J.:**

PW3 G.8216 D/CPL Malale was in the witness box. In the course of testifying, he wanted to tender caution statement of the Accused which he recorded. The Accused, through his Advocate one Grace Benny, objected that the statement to be tendered by PW3 is not of the Accused because it is rubbed by using correction fluid in the date of recording the statement and also the signature (names of Accused) appended in the statement differs.

The learned Advocate said, in the face of it, it appears the names of the Accused used as signature looks different and therefore was not signed by the Accused. She did not however state the signature and names written by the Accused how do they look in formation.

Mr. Credo, learned Senior State Attorney strongly objected because, **One**, the Accused has not disputed to have recorded the statement. **Two**, the version that the statement is rubbed in a date may not make the statement not his because the Accused has not stated when he recorded the statement in his objection.

As to signature (appended names of Accused) Mr. Credo was of the view that, in appearance, there is no difference and the learned Advocate, not being a handwriting expert, cannot rule out that, such names were not appended by the Accused. he thus maintained the statement to be recorded and signed by the Accused on the date appearing, unless the Court is of the view that handwriting of the Accused be investigated.

Having heard from the parties, it is not disputed that the Accused was interrogated by PW3 and that, his interrogation was reduced in a statement. The issue is one that, the statement is disputed by the Accused to be his. The basis of the dispute is this that, **one**, the statement is rubbed by using correction fluid in every page save for the last page and **two**, that, names of the Accused used as signature have different formation in appearance.

I agree with Mr. Credo that, the learned Advocate being not handwriting expert, may not opine on difference in formation appearance of the names of the Accused. Similarly, Mr. Credo, also may not opine

that the names looks similar in formation and therefore is of the Accused person signed by him. Again, one cannot rule out and dismiss casually objection that the statement is not of the Accused basing on the fact that, the Accused has not shown how his signature looks like and has not disputed to have recorded the statement. The recorded statements are in custody of the prosecution and therefore, asking Accused to do so, is as if we want the Accused to produce the statement he recorded. This is neither private investigation nor private prosecution as to require that kind of proof.

Again, the duty is to the prosecution to prove that the statement is of the Accused recorded by PW3 and not otherwise. In doing this, I have considered the following: **One**, It is not usual to correct the date only in every page of the statement. Looking at the statement disputed which has 6 pages, four pages have been rubbed by using correction fluid, one page, that is page five is not paged (has no page number) and the last page 6 has not been corrected.

**Two**, as to time, PW3 started recording the statement at 18:30 hours on 30<sup>th</sup> of August, 2019. At page 4 of the statement (the four pages of correction fluid), recording ended at 20:00 hours. It is not possible that the remaining two pages that is page 5 and 6 were recorded at zero

minutes because the recording of the whole statement ended at 20:00 hours.

Last **third** point is in the evidence of PW1 and PW2 who all said that the Accused was arrested on 29<sup>th</sup> of August, 2019 and referred to police station. PW2 specifically in his evidence said that:

*I then told the police on 29<sup>th</sup> of August, 2019. The police then arrested him. The Accused was arrested at home. The police then took him to Chamwino Police on 30<sup>th</sup> of August, 2019.*

With this evidence, and also that of PW3 that on 30<sup>th</sup> of August, 2019 at 17:00 hours he was instructed to record the statement by his superior, it means that, the statement to be tendered was recorded out of time as prescribed under section 50 (1) (a) of the Criminal Procedure Act, Cap. 20. This is another evidence to the effect that, the version of the Accused that the statement is not his cannot be casually dismissed.

On that note, the objection is sustained. The statement of the Accused to be tendered by PW3 is accordingly rejected in evidence.

It is so ordered.



**Gerson J. Mdemu**  
**JUDGE**  
**25/11/2022**

**DATED** at **KONDOA** this 25<sup>th</sup> day of November, 2022.



**Gerson J. Mdemu**  
**JUDGE**  
**25/11/2022**