

IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)
AT DAR ES SALAAM
CRIMINAL SESSION CASE NO. 103 OF 2018
THE REPUBLIC
VERSUS

MIRIAM D/O STEVEN MRITA.....1ST ACCUSED
REVOCATUS S/O EVARIST MUYELLA@ RAY.....2ND ACCUSED

RULING

22nd February, 2022.

E.E. KAKOLAKI, J.

This is a ruling in respect of the objection raised by Mr. Kibatala learned counsel for the 1st accused person concerning admissibility of the extra judicial statement sought to be tendered by prosecution witness one Leonia Kagemulo Mutta (PW2). It is his contention that, the witness is incompetent to tender the purported Extra-judicial statement for lack of jurisdiction to record it. He said, as per section 3(1) and (2) of the Magistrates Courts Act, [Cap. 11 R.E 2019] the MCA, jurisdiction of the Primary Court is confined to the District within which that Primary Court is situated. And that under

section 58 of the MCA, the Primary Court Magistrata or Resident Magistrate shall be Justice of peace for the District for which the Primary Court to which is assigned is establish. He said as per section 59 of the MCA which is the admissibility section, a confession made in the presence of Justice of peace who is assigned to the District Court may be proved in evidence. According to him, under section 58 of MCA admission of extra-judicial statement must be made before the Justice of peace in which the court jurisdiction is established, which is not the case in the present matter as the accused person was brought from Chang'ombe Police Station within Temeke District and not Ilala District in which Ilala Primary Court is located, where PW2 recorded the statement sought to be tendered. It is his submission that the same should not be admitted for want of competence of the recording officer (PW2).

In his submission against the raised objection Mr. Tesha argued, when recording 1st accused's extra-judicial statement, PW2 was exercising her powers within the District of Ilala in which Ilala Primary Court is established and that she did not move outside the said jurisdiction. He contended Mr. Kibatala's objection would be entertained if at all the statement was recorded outside the jurisdiction of Ilala District. On the issue as to whether PW2 is

competent to tender the exhibit or not he said, yes she is as she is the recorder of the statement. He further submitted since the case was being investigated by the ZCO for Dare es salaam Region and RCO for Temeke Region then it was proper to take the accused to Ilala Primary Court hence prayed for dismissal of the objection. When rejoining Mr. Kibatala lamented, Mr. Tesha was contradicting himself to submit that, PW2 exercised her powers properly despite of attending the suspect from outside her jurisdiction while on the other side contending the case was being investigated at Regional level which the submission from the bar for not being supported by any evidence. Otherwise he reiterated his earlier submission to counter the argument that PW2 was competent as under the interpretation of section 3(1) and (2) of the MCA she had no power to record the statement in dispute and if so there is nothing competent and legal to be tendered in court.

I have taken time to internalize both fighting submissions by the parties. Indeed there is no dispute that under section 58(1) of MCA, a primary court magistrate or resident magistrate shall be a justice of the peace for the district for which the primary court to which he is assigned is established.

And that his/her capacity to sit as justice of peace is assigned to every District Court. Section 58(1) reads:

58.-(1) A primary court magistrate or resident magistrate shall be a justice of the peace for the district for which the primary court to which he is assigned is established and, in his capacity as a justice of the peace he is hereby assigned to every district court house therein.

Similarly it is uncontroverted fact that, the Primary Court Magistrate as justice of peace has powers to record extra-judicial statement and that, in this matter the suspect (1st Accused) was brought to PW2 from Temeke Police Station for recording her extra-judicial statement on 10/08/2016 at Ilala Primary Court located within the District of Ilala. Further to that it is not disputed that, PW2 as justice of peace has powers to record extra-judicial statement of any person brought before her. The only dispute is whether the extra-judicial statement of 1st accused from Temeke Police Station within Temeke District duly recorded by Justice of Peace from Ilala Primary Court within Ilala Distirict can competently be tendered by PW2. Mr. Kibatala submits the statement is inadmissible for want of jurisdiction of the recording officer (PW2) while Mr. Tesha argues it is admissible as PW2 is the recording officer of the said statement and that it was recorded by the justice of peace

exercising her powers within the jurisdiction. It is the law that, admissibility of any document is premised on satisfaction of three conditions. **One**, form of the document sought to be tendered, **secondly**, its relevance to the case and **thirdly**, competence of the party seeking to tender it.

To start with the first condition there is no dispute that the document sought to be tendered is in the original form as per the requirement of section 64(1) of Evidence Act, [Cap. 6 R.E 2019]. Secondly, the document is an extrajudicial statement concerning the 1st accused person to this court hence relevant to this case. The third condition is the one which is subjected to test now whether the witness seeking to tender it is competent or not. Competence of the witness to tender exhibit is knowledge and possession of the thing sought to be tendered as it was held in the case of **DPP Vs. Mizrai Pirbakhishi @ Hadji and 3 Others**, Criminal Appeal No. 493 of 2016 (CAT-unreported) where the Court of Appeal observed:

"The test for tendering the exhibit therefore is whether the witness has the knowledge and he possessed the thing in question at some point in time, albeit shortly. So, a possessor or a custodian or an actual owner or alike are legally capable

of tendering the intended exhibits in question provided he has the knowledge of the thing in question.”

In this case as submitted by Mr. Tesha, the statement sought to be tendered was recorded by PW2. PW2 therefore has knowledge of the document she is seeking to tender, since she once had it in her possession and has knowledge of its contents. I thus hold, she is a competent person to tender it. In view of the fore stated this court is refraining from entertaining Mr. Kibatala's invitation to determine at this stage of admission whether the said document was competently recorded by PW2 for want of territorial jurisdiction, as to so do is tantamount to inviting the court to determine the reliability of the said extra-judicial statement which is the next stage after its admission, since there is no dispute as a justice of peace PW2 had powers to record extra-judicial statement of any person brought before her for that purpose.

In the circumstances and for the fore stated reason, it is the finding of this court that, the sought to be tendered document which is the extra-judicial statement of Miriam Steven Mrita recorded on 10/08/2016 before Pw2 is admissible in evidence as exhibit.

It is so ordered.

DATED at Dar es salaam this 22nd day of February, 2022.



E. E. KAKOLAKI
JUDGE
22/02/2022.

Ruling delivered at Dar es Salaam in chambers this 22nd February, 2022 in the presence of both accused persons in person, Mr. Genes Tesha and Gloria Mwenda learned Senior State Attorneys for the Republic, Mr. Peter Kibatala and Mr. Omary Msemo, learned counsels for the 1st accused person, Mr. Nehemiah Nkoko learned counsel for the 2nd accused person and Ms. Monica Msuya, court clerk.



E. E. KAKOLAKI
JUDGE
22/02/2022

