

IN THE HIGH COURT OF TANZANIA

(IRINGA DISTRICT REGISTRY)

SITTING AT NJOMBE

CRIMINAL SESSIONS CASE NO. 41 OF 2019

REPUBLIC

VERSUS

BATONI S/O MANGULA @BARAKA MANG'ITA

RULING

2nd & 3rd November, 2023

MRISHA, J.

The counsel for the parties in this case have parted ways on the authenticity of the Police Form No. 3 (PF3) which the accused person Batoni Mangula @Baraka Mang'ita implored me to admit as an exhibit in his case.

The gist of such prayer is to prove before the court that after being arrested on 15.05.2017 in connection with the allegations of murder which led to the filing of a Criminal Sessions Case No. 70 of 2019, the accused person herein was tortured by the police of Makambako Police Station.

It was also stated by the said accused person that he was remanded in police lockup for more than twenty days from 15.05.2017 up to 06.07.2027, then he was arraigned before the Resident Magistrate Court of Njombe at Njombe (the subordinate court) and urged the said subordinate court to permit him to be taken to Kibena hospital for some treatments of injuries he sustained due police tortures.

Submitting in support of the two limbs of her objection, Ms. Pienza Nichombe, learned Senior State Attorney who appeared for the prosecution Republic, contended that they object the PF3 to be admitted as an exhibit because first; the same does not bear the date of its issuance.

Secondly; she submitted that the said document shows that the accused person was escorted to Kibena Hospital by a Woman Police (WP) whose Force number was WP 12498 PC Jane, which according to the learned counsel, was not existing in the year 2017. She further submitted that the correct Force Number of the said WP by then (now promoted to the rank of an Assistant Inspector (A/Insp.), was WP 6525 PC Jane.

It was therefore her submission that due the above anomalies, the said PF3 should not be admitted in evidence since it appears to be a forged document; thus, the accused person should be put to strict proof

regarding the authenticity of the same and in default thereof, he should be prosecuted for forgery.

On his side, Mr. Musa Mhagama, learned Advocate representing the accused person herein, was emphatic that the said PF3 has all the qualifications of being admitted as an exhibit in favour of his client because the same bears the correct date and that the two issues raised by his counterpart, requires evidential proof which according to him, makes the preliminary objection raised by Ms. Pienzia Nichombe not to have legs to stand because for it to stand, it must contain a pure point of law.

Upon being required to address the court on whether the document which is the subject of an objection in the instant case, has any relation to the case at hand, Mr. Mhagama came up with a more detailed submission, but in essence; he indicated that the same has such relationship because despite the fact that the accused person was charged with three criminal cases including, but not limited to Criminal Sessions Case No. 70 of 2019, the investigation conducted by the police of Makambako Police Station, covered all the above cases including the one at hand.

The learned advocate also submitted that according to the Exhibits Management Guidelines issued by the Hon. Chief Justice on 2020, it is directed therein that when the objection raised touches the authenticity of a document which is sought to be tendered as an exhibit during trial, then the trial court may reserve its decision up to the stage of determination of the whole case.

On the adversary side, Ms. Pienzia Nichombe was very brief when addressing the court on the issue raised *suo motu* by this court. She accordingly submitted that the document in dispute does not have any relationship with the case at hand because first; there is nowhere in the typed proceedings of the present case it is revealed that the accused person complained to have been tortured by the police officers.

Secondly, the said proceedings do not reveal that the said accused person requested the subordinate court which committed him to this court of a trial in respect of the present case, to make an order that he should be taken to Kibena Hospital for some treatment of his wounds which he complained to have been caused by police tortures.

Ms. Pienzia Nichombe concluded by submitting that whilst in the present case the name of the deceased person is Erasto Nzali, the name of the deceased person in Case Sessions Case No. 70 of 2019 referred by the

defence counsel, is Costa Pamike which also tells that the document in dispute is not related to the case at hand, but to the former case which according to the learned Senior State Attorney, is the proper case in which the accused person ought to have submitted his prayer thereto.

I have carefully gone through the rival submissions of the learned counsel representing the parties to this case in regard to the objection against the accused's prayer that the said PF3 be admitted as an exhibit. I have also heard the said trained minds when addressing the court as to whether the document in dispute correlates to the present case.

Before putting my hand on the above presentations, I wish to appreciate and commend both counsel for their well-reasoned submissions as officers of the court something which has helped the court to understand all the contentious issues pertaining to the raised objection; hence being in a good position to determine whether the said objection has merits.

In doing so, I will be very brief. Admittedly, it is a trite law as correctly submitted by the learned defence counsel, that for the preliminary objection to stand, the same must contain a pure point of law.

However, with all due respect to the learned defence counsel, it is my considered opinion that he has somehow missed a point on that aspect,

because the circumstances of the present case do not support the argument that what the counsel for the prosecution Republic raised while challenging the prayer of the accused person in relation to the document in dispute, amounted to a preliminary objection.

I am persuaded to say so because first; the objection raised by the said counsel came in the course of hearing of the case at hand and not before. Secondly; a preliminary objection is normally raised in cases of civil nature, particularly where it contains a pure point of law and not facts which might require some evidential proof; See **Mukisa Biscuit Manufacturing Company vs. West End Distributors Limited** [1969] E.A 696 and **Tanzania Telecommunications Co. LTD vs. Vedasto Ngashwa and Four Others**, Civil Application No.67 of 2009 (unreported).

Thus, due to the foregoing reasons, I am inclined not to follow the invitation of the learned defence counsel that since his learned sister raised an objection which does not qualify to be a preliminary objection, then court may record but reserve the decision thereon to the final determination of the case.

I say so because I am alive of the long-settled principle of law that each case has to be decided per its prevailing circumstances; See **Athumani**

Rashid vs. Republic (Criminal Appeal 110 of 2012) [2012] TZCA 143
(unreported).

In my view, the circumstances of the present case; do not fit to apply the guidelines referred by the learned defence counsel because looking on the typed records of the present case, it is obvious that the document in dispute (PF3) does not relate to the case at hand.

It is also crystal clear that the said document was issued in relation to the prayer of the accused person before the subordinate court in respect of a Criminal Sessions Case No. 70 of 2019 which is about to be heard by this court before another Judge, and the information contained therein bears the name of a different deceased person compared to the one in the present case.

In the upshot, I am constrained to find that the objection raised by the counsel for the prosecution Republic has merit and in consequence thereof, I sustain their objection and reject the document sought to be tendered as an exhibit.

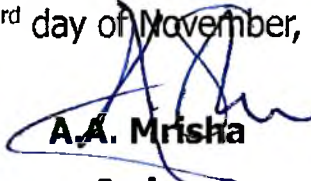
Order accordingly.




A.A. Mrisha

Judge
03.11.2023

DATED at NJOMBE this 3rd day of November, 2023.



A.A. Mrisha
Judge
03.11.2023