

THE UNITED REPUBLIC OF TANZANIA
(JUDICIARY)
THE HIGH COURT
(MUSOMA SUB REGISTRY)
AT TARIME
ORIGINAL JURISDICTION
CRIMINAL SESSIONS CASE No. 163 OF 2022
THE REPUBLIC

v.

ELIJA THOMAS PATRICK @ PATRICE ANTHONY PATRICK

**RULING IN TERMS OF SECTIONS 154, 164 (1) (c) & 166 OF THE
LAW OF EVIDENCE ACT [CAP. 6 R.E. 2022]**

20.11.2023 & 20.11.2023

Mtulya, J.:

During hearing of the instant case, **Mr. Onyango Otieno**, learned Defence Attorney, had questioned prosecution witness number three, **Mr. Philipo Mwita Mrimi** (PW3) as to whether he had recorded witness statement during police investigation in the case, and PW3 had replied in affirmative that he recorded witness statement a day after expiry of **Mr. Kyaro Steven Matiko @ Roketo** (the deceased).

Subsequent to the reply of PW3, Mr. Onyango prayed for the Republic to give him the witness statement of PW3 so that he may read before the court to demonstrate contradictions produced by PW3. His intention was to impeach PW3. In his prayer Mr. Onyango had attached three sections from the Law of **Evidence Act [Cap. 6 R.E 2022]** (the Evidence Act), namely 154, 164 (1) (c) and 166.

However, the prayer was protested by Mr. Tawabu Yahya Issa for want of the directives of the Court of Appeal (the Court) in the

case of **Lilian Jesus Fortes v. Republic**, Criminal Appeal No. 151 of 2018. In the opinion of Mr. Tawabu the Court stated that previous statement of the witness must be read before a witness and his attention be drawn to those parties which are intended to demonstrate contradictions and finally, the statement should be tendered in evidence.

According to him, Mr. Onyango had declined to ask PW3 as to whether he had recorded witness statement and failed to cite areas of contradictions, which defeats the purpose of admitting previous statements of witnesses in criminal cases. In his opinion, section 154 of the Evidence Act permits Mr. Onyango to proceed in cross examining PW3 without his previous statement on his hands. In that case, he concluded that, Mr. Onyango has faulted procedure and his prayer cannot be granted as it is overtaken by event.

In replying the submission, Mr. Onyango submitted that the indicated precedent of the Court in **Lilian Jesus Fortes v. Republic** (supra) & sections 154, 164 (1) (c) and 166 of the Evidence Act are within the interpretations brought by the precedent and no any fault was committed in praying to get hold of the statement of PW3. According to Mr. Onyango all necessary steps have been followed in praying for the previous statement of PW3 and that the first procedure indicated by the precedent for want of reading was complied. Finally, Mr. Onyango, submitted that the procedure

outlined by the Court captured all the three (3) indicated sections of the Evidence Act.

In the instant contest, I think, in my opinion, concerns enactment of section 154, 164 (1) (c) and 166, which regulate consistence and/or contradictory statements produced before police officers and in this court on one hand, and their reliability and credibility on the other. The Court at page 24 of the indicated judgment of **Lilian Jesus Fortes v. Republic** (supra), stated that:

*We are aware that the purpose of producing in court previous statements of a witness is either to demonstrate consistence on part of that witness according to section 166 of the Evidence Act or impeach him according to sections 154 and 164 of the same Act. We also take Inspiration from the decision of the High Court in **Godfrey Maleko v. Thomas Mwaikaje** [1980] TLR 112*

Then the Court at page 25 of the judgement had resolved that:

*The procedure for impeaching a witness by using his previous writing, therefore requires the following to be done, in our view, first, the previous statement must be read to him. Secondly, the attention of witness must be drawn to those parts which are intended to demonstrate contradictions. Thirdly, the statement should be tendered in evidence (see also: **Waiseko***

Ruchere @ Mwita V. Republic, Criminal Appeal No.

348 of 2013.

However, the Court is silent on whether the Defence Counsel is required to pray for statement of prosecution witness immediately after a witness admission of the recording of witness statement or may proceed in showing contradictory parts of the witness as indicated in section 154 of the Evidence Act. This Court is at a dilemma on the issue whether the prayer of Mr. Onyango is right and was registered at appropriate stage.

The Court says that, at first, the previous statement must be read to a witness. It is silent on who is supposed to read the statement, is it prosecution witness or Defence Attorney. However, it will be surprising to read the same before it is in the hands of the Defence Attorney. In any case, when there are enactments followed by the Court's directives, this court is restricted to further interpolations. Not only because of the respect of the directives, but also the Court is superior court to this court and its decisions are binding to this court without any reservations.

In the instant dispute, as I have said, the statement cannot be read without it being in possession of the defence side. I think that is the essence of the directives of the precedent **Lilian Jesus Fortes v. Republic** (supra). Having said so I am moved to grant the prayer registered by Mr. Onyango and hereby order the statement of PW3 be given to him to see whether PW3 had

produced consistence or contradictory materials during registration of his evidence in the instant case.

It is so ordered.

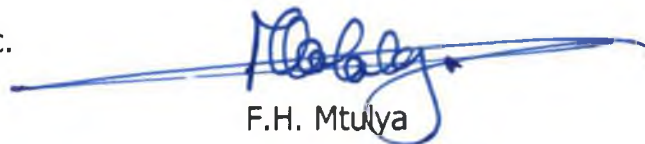



F.H. Mtulya

Judge

20.11.2023

This Ruling was delivered in the open court in the presence of accused, **Mr. Elija Thomas Patrick @ Patrice Anthony Patrick** and his learned Defence Attorneys, **Mr. Otieno Onyango** and **Mr. Paul Obwana**, and in the presence of **Mr. Tawabu Yahya Issa** and **Mr. Davis Katesigwa**, learned State Attorneys for the Republic.



F.H. Mtulya

Judge

20.11.2023