

THE UNITED REPUBLIC OF TANZANIA
(JUDICIARY)
THE HIGH COURT
(MUSOMA SUB REGISTRY AT TARIME)
ORIGINAL JURISDICTION
CRIMINAL SESSIONS CASE No. 184 OF 2022
THE REPUBLIC v. PETER NTINGWA PETER
RULING

05.12.2023 & 05.12.2023

Mtulya, J.:

In the course of cross examining **Mr. Ntera Ntongoli** (PW1), **Mr. Leonard Magwayega**, learned counsel for the defence prayed for original document of witness statement of PW1 recorded at **Tarime District Police Station** (the police station) in order to show areas of contradictions between PW1 witness statement and materials produced today during examination in-chief by the same witness. In registering his prayer, Mr. Magwayega cited the provision of section 154 of the **Evidence Act [Cap. 6 R.E. 2022]** requesting the Republic to give him original hand-written witness statement of PW1.

In the opinion of Mr. Magwayega, he cannot proceed without having the statement on his hand for purposes of showing areas of contradictions and discrepancies. According to him, the committal bundle supplied to the defence side is in photocopies without any display of the PW1's signature. The prayer was protested by **Mr.**

Tawabu Yahya Issa, learned State Attorney for the Republic for two (2) reasons, namely: first, Mr. Magwayega may proceed without the statement in his hands as provided in section 154 of the Evidence Act; and second, the enactment of section 154 of the Evidence Act does not provide for original hand-written statements of witnesses. In a brief rejoinder, Mr. Magwayega stated that section 154 of the Evidence Act is very clear and has several circumstances. According to him, the scenario cited by Mr. Tawabu is just one in many circumstances mentioned in the section and his prayer is covered under the same section in different scenario.

I have perused section 154 of the Evidence Act, and for purposes of appreciating the same, I will quote it in this Ruling:

A witness may be cross examined on previous statements made by him in writing or reduced into writing and relevant matters in question, without such writing being shown to him or being proved, but if it is intended to contradict him by the writing, his attention must before the writing can be proved be called to those parts of it which are to be used for the purposes of contradicting him.

This enactment has already received a Court of Appeal (the Court) decision hence this court cannot be detained on the same subject. The Court in the precedent of **Lilian Jesus Fortes v.**

Republic, Criminal Appeal No. 151 of 2018, at page 25 of the judgment, stated that:

The procedure of impeaching a witness by using his previous writing requires...first the previous statement must be read to him, second his attention be drawn to the areas intended to demonstrate the contradictions; and finally, the statement should be tendered in evidence.

In the present dispute, the issue is whether the prayer of Mr. Magwayega may be granted for want of the first step directed by the Court. I am aware that Mr. Magwayega used the terms which are not in the enactment, original hand-written statement of the PW1, but it is certainly clear that he intended to have the original statement for the first step directed by the Court to take its course before the second and final step.

In my considered opinion, whether the intended previous statement is in original hand-written form, typed in forensic or soft copy in science, the key word is previous statement. I think the first requirement of section 154 of the Evidence Act and indicated precedent **Lilian Jesus Fortes v. Republic** (supra) cannot be well cherished and appreciated without the defence having in possession of the original witness statement of PW1.

This is a court of law with touches of justice and thinks that the previous statement of PW1 be given to Mr. Magwayega not only for proper running of this case, but also for want of procedures directed by the Court. Mr. Magwayega cannot pin-point and demonstrate areas of contradictions without the original previous statement of PW1. Having said so, I order the Republic to supply the same to Mr. Magwayega to proceed with his cross examination.

It is so ordered.




F. H. Mtulya

Judge

05.12.2023

This Ruling was delivered in the open court in the presence of accused, **Mr. Peter Ntingwa Peter** and his learned Defence Attorney, **Mr. Leonard Magwayega** and in the presence of **Mr. Tawabu Yahya Issa**, learned State Attorney for the Republic.



F. H. Mtulya

Judge

05.12.2023