

THE UNITED REPUBLIC OF TANZANIA
(JUDICIARY)
THE HIGH COURT

(MUSOMA SUB REGISTRY AT MUSOMA)

ORIGINAL JURISDICTION

CRIMINAL SESSIONS CASE No. 70 OF 2023

THE REPUBLIC v. MKOME EDWARD @ MWITA

RULING [TRIAL WITHIN TRIAL]

22.02.2024 & 22.02.2024

Mtulya, J.:

In the course of hearing the present case, **Police Officer H.292 D/Cpl. Ezbon Ezra** (PW11) prayed to tender a cautioned statement allegedly extracted from **Mr. Mkome Edward @ Mwita** (the accused) to substantiate that the accused had confessed to have caused death of his son **Mr. Mwita Mkome** (the deceased) that had occurred on 29th May 2023 at Bumangi Village within Butiama District in Mara Region.

However, the prayer was protested by **Ms. Marry Joakimu**, learned Defence Attorney, who had appeared for the accused. According to Ms. Joakimu, the accused did not record any cautioned statement at the police station, but was forced by PW11 to sign unknown document which was already prepared in handwritten texts. Subsequent to the protest, the case had changed its course to a Trial Within Trial (the trial) in order to abide with the directives of the Court of Appeal in the precedent of **Paulo Maduka & Four Others v. Republic**, Criminal Appeal No. 110 of 2007.

In the trial, both parties had brought one (1) witness and one (1) exhibit to substantiate their positions. The Republic had marshalled PW11 (TPW1) and alleged cautioned statement of the accused whereas the Defence side had summoned the accused and Police Form Number Three (PF.3). During registration of evidences, TPW1 had testified that on 7th June 2023 at around 20:00 hours he recorded the alleged accused's cautioned statement at Musoma Police station and the accused admitted to have killed the deceased and took police officers to the scene of exhibit bicycle.

According to TPW1, he followed all prerequisite steps in recording cautioned statement of accused persons, including informing the accused all of his rights and before he had entered his signature the statement was read before him. TPW1 testified further that he recorded the accused when he was in good condition, did not threat or promise him anything or force him to sign the statement. According to him, the interrogating room had one table, four chairs and several documents.

In defence, the accused had denied to have recorded any statement at the police station in Musoma, but was forced to sign already prepared hand-written cautioned statement, after several beatings in police mess of Musoma. According to the accused he was arrested at Shinyanga on 2nd June 2023 and was brought in Musoma for interrogation, but ended up in police mess and

received attacks and torture at several parts of the body, including in right hand and penis.

In his testimony, the accused stated that the police had injected a needle on his right hand, spiked at his penis and stabbed different parts of the body to cause severe pains and body swollen. According to the accused the torture exerted had caused him to sign the alleged cautioned statement. In order to substantiate his testimony and torture against him by the police officers, the accused had produced Police Form No.3 admitted in the case as TD.1 to show that he had actually suffered attacks and pains.

In the present contest, I think, in my considered opinion, the question is whether the accused was forced to sign the alleged cautioned statement. In order to resolve the dispute, I have decided to peruse exhibit TD1 and the alleged cautioned statement admitted in the trial as exhibit TP1 for scrutiny purpose. Exhibit TD1 shows that the accused had attended and treated at Butima Government Hospital (the hospital) on 1st July 2023 and approximate age of injury by a medical doctor shows the injury had occurred three (3) days before attending the hospital, whereas the torture occurred on 7th June 2023 and 8th June 2023. The exhibit, at item (v) of the first page, also described the accused's condition and appearance as: *well*.

On the hand exhibit TP1, the accused had produced detailed information with regard to his historical background, home

residence, family background, family disputes, economic activities, travels to Shinyanga, reasons and plans to kill the deceased for ritual sacrifice to boost his business. In the second page of the statement, the accused states that:

...kuna Mzee William Muhuga ana tabia ya kuja dukani kwangu na kunieleza jinsi ya kupata mali, kuwa kuna mganga anatoa dawa ya kumtoa mtoto au ndugu wa karibu sana, kama vile mama au baba kwa ajili ya kupata utajiri wa mali au fedha, lakini lazima niwe na nguo za mtoto wangu zikiwa na damu...nikaanza kuangalia mazingira mazuri jinsi ya kumuua...ilipofika majira ya saa moja na robo, giza likitaka kuingia nilimuona huyo mtoto akiwa anakuja anaendesha baiskeli. Aliponikaribia kwa karibu, nilimteka na kumpeleka vichakani na kumbamiza kichwa kwenye jiwe na kupoteza fahamu. Akawa anatokwa damu kwenye jeraha ambalo alipasuka baada ya kumbamiza. Ndipo niliendelea kumkaba koromero ili afe. Baada ya dakika chahe nilimuona tayari amekwishafariki.

The indicated details in the statement would only be produced by a person who has direct knowledge of what had transpired. I am also aware that the accused, apart from his narrations at the police station, he also took police officers to the scene of the exhibit bicycle. Similarly, the accused admitted his historical

background, his marriage to two (2) different wives and seven (7) children which corroborate the alleged cautioned statement.

Having said so, and considering all circumstance in the trial, I am persuaded to believe that the accused had recorded the alleged cautioned statement and voluntarily signed it. In the end, I overrule the raised objection, and hereby admit exhibit cautioned statement of the accused in the main case as exhibit P.5.

It is so ordered.




F.H. Mtulya

Judge

22.02.2024

This Ruling was delivered in the open court in the presence of all accused person, **Mr. Mkome Edward @ Mwita** and his learned Defence Attorney, **Ms. Mary Joakimu** and in the presence of **Mr. Felix Mshama, Ms. Happinnes Machage** and **Ms. Grace Matimbwi**, learned State Attorneys for the Republic.


F.H. Mtulya

Judge

22.02.2024