

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(IRINGA SUB REGISTRY)
AT NJOMBE.**

CRIMINAL SESSION CASE NO. 70 OF 2019

**THE REPUBLIC
VERSUS**

**BATON S/O MANGULA @ BARAKA S/O MANG'ITA 1ST ACCUSED
AMIRI S/O PAMIKE @ MJAPANI 2ND ACCUSED
ODILO S/O MGAJILWA @ MKINGA 3RD ACCUSED
JOSEPH S/O ROITA @ MENGO 4TH ACCUSED**

RULING

24th & 25th June, 2024

I.C. MUGETA, J:

PW10 sought to tender the identification parade register for the ID parade he conducted involving Olipa Ngoda as a witness and the 1st and 3rd accused persons as suspects. Allegedly, the witness, at that parade, identified the 1st accused person as among the murderers who brutally terminated the life of her husband which murder is subject of this case.

The defence team has objected the admission of the parade register on procedural irregularities. I shall address two complaints only. The first one is that the suspects were not informed of their rights to have a relative or lawyer present at the parade and secondly, that on completion of the

parade they were not asked to state their satisfaction or dissatisfaction with the manner the parade was conducted and their comment recorded.

The prosecution team has submitted that there is no law which imposes such condition on the officer conducting the parade. Further that, even if such legal obligations exists, the two requisites were met per the evidence of PW10 in the witness box here in court. The relevant part of PW10's evidence reads:

"I also informed them that they could have an advocate or relative present but none of them had been secured. Both of them said they needed not the presence of either an advocate or relative at the parade".

This is in relation to the first objection. In relation to the second objection, PW10 testified:

"I called Odilo and Baton to come forward again. I told them that the witness has managed to identify one suspect only. On that account, I asked if any one of them had an objection to the manner the parade was conducted. Both said they were satisfied with how the parade was conducted".

In rejoinder, the defence advocates reiterated that the above requirements obtains at section 60 of the Criminal Procedure Act and [Cap. 20 R.E 2002] (the CPA) Police General Orders (the PGO) No. 232 (2)(d).

I have read section 60 of the CPA and the said GPO, indeed, they provide for the manner of conducting the ID parade. However, the requirements to inform the suspect of the right to have a relative or advocate present and to comment on the manner the parade was conducted are missing.

My research into the matter has revealed that in this jurisdiction the conditions are imposed by case law starting with **Rex vs. Mwango Manaa** [1936] 3 EACA 29. This case sets out 13 principles that ought to be observed commutatively for a valid ID parade. The principles it established are restated in **Ssentale vs. Uganda** [1968] 1 EA 365 (HCU) by Sir Udo Udomo, Chief Justice. However, the **Mwango Manaa** case principles interpreted the Kenya Police Order No. 15/26, approved by the Chief Justice of Kenya, which in my view, are not in *pari materia* with the Tanzania's section 60 of the CPA or the PGO 232(2)(d). Therefore, in terms of law, the Kenya Police order cannot apply in Tanzania or Tanganyika for that matter.

However, through case law the two rules have been made applicable in Tanzania. In **Winani s/o Nyamhanga & Charles Marwa vs. The Republic**, High Court Criminal Appeal No. 33/2006, (CF) Criminal Appeal No. 34/2026, High Court Mwanza (unreported) at page 5 it was held that

the principle in **Mwango Manaa** (supra) was adopted by the Tanzania Court of Appeal in **Tongeni Naata vs. Republic** [1991] TLR 54.

I have read the **Tongeni** case and found that, indeed, the **Mwango Manaa** case was cited but the Court of Appeal did not seize the opportunity to adopt the principles in **Mwango Manaa**. To my knowledge, therefore, all the 13 principles has not been fully adopted by the Tanzania Court of Appeal by a statement in a single case. They have nevertheless been occasionally partly adopted as they seem relevant in a particular case. Relevant to the objections in this case is **Godfrey Richard vs. Republic**, Criminal Appeal No. 365/2008, Court of Appeal – Dodoma (unreported) at page 19 – 20. They have also been adopted in High Court decided cases which the prosecution team have said are just persuasive. I agree with the assertion.

In **Winani case** (supra) the High Court at page 5 followed another High Court decision in **Theonest s/o Leonard, Salvatory s/o Francis, Fabian s/o Alphonse vs. Republic**, Criminal Appeal No. 17/1985, High Court – Mwanza (unreported), seven (7) precautionary measures are listed as necessary for a proper ID parade to be conducted. They include the right to be informed of the right to have an advocate, friend or relative and the right to be asked, at the termination of the parade, as to whether the

parade was conducted to his satisfaction and the response be noted. Therefore, the two requirements are now a settled law.

Going through the document sought to be tendered, such rights does not seem to have been afforded to the 1st and 3rd accused persons. The prosecution has argued that it is because the identification parade register being a standard form (PF 186) does not provide for spaces to fill in such information. I agree but law is law. Officers conducting ID parades must find ways to meet the stipulated conditions for a valid parade. If PF186 is unsatisfactory in terms of contents, those responsible must update it. The deficiency cannot constitute a sufficient cause for non-compliance with the law.

Can oral evidence of PW10 supplement the deficiency in the ID parade register as argued by the prosecution team?

For the interest of justice, I would have said yes. However, for the sake of rule of law, I cannot take that course. This is because section 100 of the Evidence Act [Cap. 6 R.E 2022] excludes oral evidence where a function ought to be done in writing. It states:

*"100(1) When the terms of a contract, grant, or any other disposition of property, have been reduced to the form of a document, and **in all cases in which any matter is required by law to be reduce to***

the form of a document, no evidence shall be given in proof of the terms of such contract, grant, or other disposition of property, or of such matter except the document itself, or secondary evidence of its contents in cases in which secondary evidence is admissible under the provisions of this Act”.

Therefore, I hold, that the oral evidence of PW10 cannot complement the contents of the ID parade register. The case of **Abas Kondo Gede vs. The Republic**, Criminal Appeal No. 71/01 of 2020, Court of Appeal – Dar es Salaam (unreported) cited by the prosecution whereat page 12 was held that the oral evidence sufficed in the absence of a paper trail documentation is distinguishable. It did not deal with a situation where a function is mandatorily required to be in writing. It is now settled law that a chain of custody can be proved by oral or documentary evidence or both.

The prosecution, rightly, cautioned me about the danger of going into the merits of the document at this stage where what is at issue is its admissibility. The case of **DPP vs. Sharif s/o Mohamed @ Athuman & 6 Others**, Criminal Appeal No. 74/2016, Court of Appeal – Arusha (Unreported) was cited to me. I agree with the prosecution that at this stage what matters is admissibility of the document. However, before that admission, as argued by the defence team, the document must be cleared

for admission. One of the issue to be considered at the clearance stage is the competence of the evidence sough to be tendered. In **Sharif's** case (supra) it was held:

"... evidence is competent if it meets certain requirements of reliability".

I hold that the requirements for the suspect to be informed of the right to have a relative/lawyer present at the parade and to get his opinion about his satisfaction or dissatisfaction with the manner the parade was conducted aims to ensure reliability of the parade. When the conditions are not met, the identification parade register fails the reliability test, hence, incompetent and inadmissible.

The two objections are upheld. The prayer to admit the identification parade register is rejected.




I.C. MUGETA

JUDGE

25/6/2024

Court: Ruling delivered in open court in the presence of the accused persons in person, Ms. Happy Ilomo, Ms. Neema Msafiri, Mr. Frank Ngafumika, Mr. Octavian Mbungani, learned advocates for the

accused persons, Cecilia Mkonongo, Principal State Attorney, Gines Tesha, Senior State Attorney and Elise James, State Attorney for the Republic.

Sgd. I.C. Mugeta

Judge

25/06/2024