

TANZANIA / JUDGMENT

the republic vs josephat kawawa athman 2 others 2023 tzhc 21977 12 october 2023

COURT
TZHCDECIDED
12 October 2023

Source: media.tanzlii.org · Research copy typeset by Esheria. Not court-issued or certified.

THE UNITED REPUBLIC OF TANZANIA (JUDICIARY) THE HIGH COURT (MUSOMA SUB
REGISTRY) AT MUSOMA ORIGINAL JURISDICTION CRIMINAL SESSIONS CASE No. 13 OF 2023
THE REPUBLIC V. 1. JOSEPHAT KAWAWA @ ATHMANI

2. MASHAKA JUMA @ MANGU @ JESHMAN

3. MKONGWE MARWA @ KINOZI @SOMATAMA RULING IN TERMS OF SECTION 164 OF THE CRIMINAL PROCEDURE ACT [CAP. 20 R.E. 2022] 12.10.2023 S 12.10.2023 Mtulya, J.: During hearing of the present case, Mr. Daud Mahemba, learned counsel for the first accused, was reading witness statement of the prosecution witness number three, Mr. Edward Mwandu (PW3), arresting person of the first and second accused persons in the instant case. Mr. Mahemba was determined to read the whole document to the finality before leave of this court was granted to do the same. Following the circumstance, he was asked by Mr. Abdulheri Ahmad Sadiki and Ms. Natujwa Bakari Idd, learned State Attorneys for the Republic, as to why he is doing so before leave of the court was sought and granted. However, Mr. Mahemba had replied that he is within the ambits of the directives of the Court of Appeal (the Court) in the precedent of Lilian Jesus Fortes v. Republic, Criminal Appeal No. 151 of 2028, which resolved at page 25 of the judgment, that: i The procedure for impeaching a witness by using his previous writing, requires the following to be done: first, the previous statement must be read to him, second, the attention of the witness must be drawn to those parts which are intended to demonstrate contradiction. Thirdly, the statement should be tendered in evidence. However, regarding the procedure on the record of the appeal, the Court thought that: We are afraid it was not followed because what we see on page 40 to 41 are cross examination, after which a prayer to tender the statement is successfully made. Mr. Mahemba, in the present case while proceeding with his cross examination, without prayer or order of this court to do so, proceeded to read the statement and was determined to read the whole of it and finally to pray for PW3 to admit the same. In that case, the present proceedings will not display reading of the statement as indicated by the second quoted paragraph of the cited precedent of the Court. The law in section 164 (1) of the Evidence Act [Cap 6 R.E 2022] (the Evidence Act) gives mandate this court to regulate proceedings in cases like present one, and where a learned counsel wants to invite

application of the procedure in the case of Lilian 2 Jesus Fortes v. Republic (supra) must comply with the section, which requires leave of the court to be sought, before a procedure directed by the Court is cherished. However, in the present circumstances, Mr. Mahemba, without any prayer or leave of this court, he continued to read PW3's statement. The procedure employed by Mr. Mahemba breaches section 164 (1) of the Evidence Act. His proceedings will be reflected in the text of cross examination pages, without reflection of the prayer, grant of the prayer and indication of the contradictory statements. What was proceeding in this court this afternoon is discouraged by the Court. It cannot be displayed on record as how the procedure was employed. The Court has introduced the procedure as the way to grease proceedings in court, and had not introduced any fresh and new enactment in section 164 (1) of the Evidence Act. The Court in the indicated precedent has not altered or deleted the words with consent of the court. Having said so, I restrict Mr. Mahemba to proceed with the reading of the witness statement of PW3. 3 This Ruling was issued in the open court in the presence of all accused persons, Mr. Josephat Kawawa @ Athmani, Mr. Mashaka Juma @ Mangu @ Jeshman and Mr. Mkongwe Marwa @ Kinozi @ Somatama and their learned Defence Attorneys, Mr. Daudi Mahemba and Mr. Evance Njau, and in the presence of Mr. Abdulheri Ahmad Sadiki and Ms. Natujwa Bakari Idd, learned Judge 12.10.2023 4

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE	https://media.tanzlii.org/media/judgment/304061/source_file/the-republic-vs-josephat-kawawa-athman-2-others-2023-tzhc-21977-12-october-2023.pdf
CASE PAGE	https://chat.esheria.ai/case-law/tanzania/ImpeachmentofWitness-tzhc-2023--6a3ea52d3b1caa91298263fd

Prepared on 13 October 2026 · Esheria