

TANZANIA / JUDGMENT

Criminal Session Case 21 of 2023 Ruling Mrisha J

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IN THE HIGH COURT OF TANZANIA (SUMBAWANGA DISTRICT REGISTRY) SITTING AT MPANDA
CRIMINAL SESSION NO. 21 OF 2023 REPUBLIC VERSUS JUMA s/o LUCHANGANYA MABULA
@SENDAMA..... Ist ACCUSED EMMANUEL s/o
MAKOYE.....2nd ACCUSED

RULING

23d & 24* September, 2024 MRISHA, J. On 23rd September, 2024, I reserved my reasons for overruling the objection against the prosecution's prayer for the court to admit the cautioned statement of the second accused as an exhibit. This ruling is therefore, intended to unveil those reasons and provide the highlights about the rival submissions of the counsel from both sides. Mr. Hemed Amour, learned counsel for the second accused urged the court not to admit the cautioned statement of the second accused for one reason that, the second accused was not properly cautioned because PW7, No. H. i 4119 D/C CpI Ainea who alleged to have recorded his cautioned statement, did not inform that accused about the offence and law he was charged with. He also argued that such omission goes contrary to the provisions of section 53 (b) of the Criminal Procedure Act, Cap 20 R.E. 2022 (the CPA) which requires that a suspect must be informed of the fact that he is under restraint and of the nature of the offence he is charged with. He further argued that it is the position of the law stated by this court in the case of Republic vs George Menson @Sanga and Others, Criminal Session Case No. 118 of 2021 (HCT Iringa Registry sitting at Njombe, unreported) that where a suspect is a layman, he or she must be informed of the charging provision and of the offence charged. According to the learned defence counsel, the above case has the akin situation with the case at hand where it is shown in the document in dispute that the accused was charged under the so called, "Chini ya kifungu cha 196 cha K.A" which the counsel argued is not among the enacted laws in our country. In response, Mr. Kalistus Kapinga, learned Senior State Attorney for the respondent Republic, contended that the cautioned statement sought to be tendered as an exhibit clearly depicts that the second accused was charged with accusations of murder. 2 He also contended that in stating the offence, it is the initials "/(./" which were used by PW7 which according to the learned State Attorney, is a curable defect and cannot make the said cautioned statement not to be admitted because the cited provision requires that a suspect should be informed of the nature of the offence he is charged

with, as it was stated in the case of Andius George Songoloka and 2 Others and Issa James vs Republic, Criminal Appeal No. 110 of 2020. The respondent's counsel further submitted that the above cited cases are of the Court of Appeal whose decisions are binding upon the lower courts including this court. Hence, he urged the court to be bound by those decisions, dispense with the one cited by the learned advocate for the second accused, and proceed to overrule the objection raised by the defence side. Rejoining, Mr. Amour submitted that the cited cases by the respondent's counsel are distinguishable. He added that in this case, the court cannot examine the contents of the document sought to be tendered as an exhibit, unless it has been admitted. Having gone through the above parties' rival submissions and considered all the cases referred to me, it is now my task to determine whether there is merit in the objection raised by the learned counsel for the second accused person. 3 It is undenied that the cautioned statement in dispute was actually recorded from the second accused person, by PW7. Likewise, it is undenied that the recorded statement relates to the allegations of murder which the second accused has been indicted with, together with the first accused. The only dispute with the counsel for the second accused person focuses on, is the procedure stipulated under section 53 (b) of the CPA. His concern is that by indicating that the second accused was charged with the so called, "chiniya kifungu cha 196 cha K.A" PW7 committed a procedural irregularity which entails that the said accused person was not properly informed of the nature of the offence and the law he is alleged to have contravened. I agree with the counsel for the second accused that it was not proper to use that abbreviation in the course of informing that accused of the nature of the offence. However, with all due respect to the learned defence counsel, I do not agree with him that the circumstances of the case at hand are akin to those faced by this court in the case of George Menson @Sanga (supra). In that case, the problem was about indicating that the accused had been charged with the so called, "Sheria ya 16" which is not among the existing laws in our country, but in the present case, the document in dispute clearly reveals that the second accused was informed that he is charged with an offence of murder contrary to section 196 of the so called, "K.A" 4 In my view, that is a minor defect which cannot make the document in dispute not to be admitted in evidence, save where there were other strong reasons for it not to. Looking at the cautioned statement in dispute, it appears to me that it is written in Swahili language, and there is a Swahili version of the Penal Code, Cap 16 which has been officially referred to as Kanuni ya Adhabu, Sura ya 16; others would prefer to refer it as K.A. I think that is why PW7 decided to use such abbreviation. However, I think it would sound much better for him to write, "Kanuni ya Adhabu" and put in bracket the abbreviation (K.A) ahead of that phrase in order to avoid unnecessary confusions, as it has happened in the present case. Regarding the cases cited by the counsel for the respondent Republic, I am of the considered opinion that the same emphasize on the need to inform the suspect of the nature of the offence he is charged with. Having gone through the document in dispute, I am satisfied that PW7 complied with the legal requirement stipulated under section 53 (b) of the CPA despite the minor defect committed by him, as I have indicated above. Hence, I find those cases to be binding to this court, and applicable to the circumstances of the case at hand. Regarding the argument that this court cannot examine the contents of an exhibit before being admitted, I am not prepared to go along with that 5 argument. This is because the law is very clear that whether or not there is an

objection, the document must be given to the magistrate or judge to inspect it. That is normally done before admission of the document. (See: Step 3 of Guideline 2.4.3 of the Exhibit Management Guidelines issued by the Hon. Chief Justice on September, 2020). It follows therefore, that owing to the foregoing reasons, I am of the settled view that the objection raised by the counsel for the second accused person is unmerited. Consequently, the same is overruled and the prayer by PW7 to have the cautioned statement of the second accused be admitted in evidence, is hereby granted. It is so ordered. A' Gf JUDGE 24.09.2024 DATED at MPANDA this 24th day of September, 2024 LA; MRISHA JUDGE 24.09.2024 6

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