

TANZANIA / JUDGMENT

r vs adam rashid jalal khan

2021 tzhc 9536 2 december 2021

COURT
TZHCDECIDED
2 December 2021

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IN THE HIGH COURT OF TANZANIA (DAR ES SALAAM DISTRICT REGISTRY) -y-v; ; ' ... ■ '-i®
^ATDAR ES SALAAM i -y 1 7.Jf. :: ■/ ■ ::[■ ../'Ulfli Ui; CRIMINAL SESSION CASE NO. 29 OF 2016
REPUBLIC VERSUS ADAM RASHID JALAL KHAN

RULING

A. R, MRU MA,J An objection has been raised in respect of admissibility in evidence of an alleged cautioned statement of the accused person Adam Rashid Jalal Khan. Mr. Josephat Mabula, counsel for the defence has challenged the admissibility of the said statement on two fronts: First the learned counsel has challenged the statement on the legal aspect The counsel says that in terms of section 57(2)(b) of the Criminal. Procedure Act[cap 20 RE 2019], a police officer who records the interview of an accused person must record or indicate in the statement the time the Police cautioned the i accused person. According to the learned counsel the statement PW6 wants; to tender in evidence does not show thie time the accused person was cautioned; < ■ ;< On the second objection, the learned- counsel contends that his client; was forced to sign on the statement whidh: was recorded put of < V time. He said that the accused was hand cuffedpoth in hands and legs, kicked and punched by PW6 and was thredtenecfto be taught a lesson if he wouldn't sign the statement. Responding to the defence counsel's submissions Ms. Tully Helela learned State Attorney submitted that the objection raised by Mr. Mabula is without any substance. The learned state attorney counsel contended that the cautioned statement which PW6 wants to tender in evidence complied with all requirements of section 57(l)(b) of the Criminal W-i'i- ' ■■ I-7 i1"* ' Procedure Act, She therefore argued the court to dismiss all defence objection. Section 57(2) under which this objection is based provides as follows. "Where a person who is being interviewed by a police officer for the purposes of ascertaining whether he has committed an offence makes, •4; during the interview, either orally or in writing, a confession relating to an offence, the police officer shall make, or cause to be made, while the 2 interview is being held or as soon as practicabl after the interview is ' ■ /■: ' ■ :• , • . completed/a record in writing setting out- . ' >"

- a) Particulars of any statement madebythe person orally during /? the interview otherwise than in answer to question. J

- b) Whether a caution was given to the person, b •the confession and if so the termslrfrwhich vr ' ■ if -S; •'*& the caution was 4. given, the time what it was giverrand T any response made by the person to the caution. I have carefully perused the alleged cautioned statement, jnt, I agree with the defence counsel that the statement does not show the time when the caution was given to the accused- person. As quoted above section 57(2)(d) of the Criminal Procedure Act, requires the police officer who interview the accused person to make or cause to be made a record writing setting out: Whether a caution was given to the person before he r made the confession, and if sot II. - the terms in which the caution was given. i
- the time when the caution was given; IV. - any response given by the person. Starting with the first element, Pw6 has testified un disputedly that the caution was given. Paragraph 2 of the statement reads: : '- - 3 " Maelezoya Kukiri/ ungamo(MimrAfisa wa Polish ASPSheiimoh Nakuonz wewe^AdamRashidJalala Khan kuwa unatuhumiwa kwakosa la kusafirisha Dawa za kuleyya k/t 16(1) {b)(i):ya sharia ya (kuzuiaDawaya Kulevya (k) ^ura95.Hulazimishwi: kueleza lolote lile juu ya shtdka^hilhBalikwa hiari yakp; (mwenyewe. Yotephptakayotamka yataandikwa na kutumwa Mahakamanikama ushahidi pindi yakihitajika. Pjapjrfcpewa haki ya kuwa na Wakili, Jumaa au Rafiki wakati maeiezo yako yanaandaliwa." I have no doubt that the above quoted, paragraph is what the police construed to constitute a caution. However;/ it does not show or state at *' . • ' *./•**;V' ' • ... • , . . . v.-:7ii';... • * .*,c what time it was given. This is contrary to the requirement of section 5:7(2j(d) which requires the time the caution- was given to. be set out in writing. Thus the recording officer is required to state specific time the caution was given. This should be differentiated from the times when the interview was commenced which is covered under section 57(2)(e) and ■ ■ ?■ i' ■: ■- <■'<■ i J?'!-., the times when he commenced to write out the statement which is covered under section 57(2) (c) The law also requires the officer to setroutin writing the terms in which the caution was given. This is crucial' because in my view it is not enough to tell the accused person that he is Being accused of having committed the offence of trafficking in narcotic drugs contrary section ; 16(1).(b).(l)pf the Drugs and Prevention of illicit traffic in Drugs Act [cap J .. I"-.-. •-i J 95 RE 2012]7bln order to be a true caution,- thesuspect must be informed what.does the law he is accused of contravening'says and the penalty or\ punishment Be is likely to get if he is ultimately found guilty of that . ■ > • ■ ' ' . ' ■ • ' offence. To caution a person is to ask him! oi^herlb take care or to warn ■ him or her tp exercise extreme care before doing anything. It is to give notice of danger [^ee Black Law Dictionary^ a suspect to be cautioned because justice is not a hide and seek game. ■ The accused must have a clear understanding of the charges against him and the punishment for theoffences- hPisaccusedofcommitting before making his confession, and those must be-shown in the cautioned statement under the head "the terms in which the caution was given" embodied in section 57(2) (d) of the CPA. A caution which does not state the terms in which it was given." Falls ^hort? of being a cautioned statement as it contravenes the law governing it, • ■ ? . . ;'7 v7' r' . Counsel for the defence raised another crucial point of law in respect of the time the statement was recorded. According to Mr. Mabula, the statement was recorded out of time. The Learned State Attorney did not respond to that. 7" 7^1'77 ■ 7 ■ ■ . . 7 777 - • . • - Periods

available for interviewing the accused person while under police restraint is provided for under section 50617 of Criminal Procedure 5 Act, According to that law the time is four pmmencing at the time i when the, suspect was taken under restrain# aspect of the offence. In , ; - ; Solin' : ■ • > ! S ? ' W ? ■ the present case the accused was arrested at 23,30 hrs. According to the ■ ' : ■ ' < • ■ . > ■ • ' ■ .. • ' • ■ ? ' ? ; > J' ■ • ■ ■ ' T , - ' 1 ■ - , ; i ' • statement and PW6, interview was comm 30 hrs which means it was commenced > n the last minute of : i i f l ^ available for interview as. prescribed by-the law. As no extension was ^ ough t and obtained as a • ; . - S . : | required by. section 51(1) (a) and (b) of t l he interview conducted T ; - • ? A - + 1 • ■ * way illegal and therefore ineffectual. .. ; 6 -- ■ The above two legal defects are suffice to disqualify the statement from being a cautioned statement and therefore not admissible in t. ? ' / 1 t evidence. : < / . IN I ' iff Judge

- / ' • * / v f S ' 2 / 12 / 2021 ^ . 6

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