

TANZANIA / JUDGMENT

the republic vs george wambura nyangare sura 2023 tzhc 21444 27 september 2023

COURT
TZHCDECIDED
27 September 2023

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THE UNITED REPUBLIC OF TANZANIA (JUDICIARY) THE HIGH COURT (MUSOMA SUB
REGISTRY) AT MUSOMA ORIGINAL JURISDICTION CRIMINAL SESSIONS CASE No. 181 OF 2022
THE REPUBLIC v. 1. JOHN MBATIRA @ MTUKE

2. SADICK SHABANI @ YOHANA

3. MANGA MGONOKI

4. STEVEN AUGUSTINO @ ODIERO RULING [TRIAL WITHIN TRIAL] 27.09.2023 & 27.09.2023
Mtulya, J.: In the course of producing his testimony, prosecution witness number six (PW6)
H. 83 CpI. Onesmo prayed to tender cautioned statement of Mr. Sadick Shabani @ Yohana
(the second accused). However, the payer was protested by the defence for want of time
limitation and voluntary taking of the statement. Following the directives of the Court of
Appeal in the precedent of Paulo Maduka & Four Others v. Republic, Criminal Appeal No.
110 of 2007, a trial within trial was necessary. During the trial within trial, the Republic had
marshaled H. 83 CpI. Onesmo (TWP1) to testify that he interrogated the second accused on
13th July 2022 at Nyehunge Police Station at 16:20 hours from the arrest which took place at
16:00 hours and did not torture or caused pains or promised anything to the second accused.
In his i testimony, TWP1 stated that he followed all legal steps required in interrogating
accused persons. Replying the evidence, the defence had brought the second accused
(TWD1) to testify that he was threatened and tortured before his statement was recorded
and that it was extracted out of statutory time. According to TWP1, he was arrested on 13th
July 2022, at Nyehunge Village within Sengerema District and recorded statement on 22nd
July 2022 at Butiama Police Station by use of torture contrary to section 50 (1) of the Act and
section 27 (3) of the Evidence Act [Cap. 6 R.E. 2019] (the Evidence Act). Section 50 (1) of the
Act requires four (4) hours' time period in recording accused persons' statements whereas
section 27 (3) of the Act provides that confessional statements of accused persons must be
voluntarily recorded. I have perused submissions of the parties and exhibit TW1 and found
that the second accused was recorded statement on 13th July 2022 at 16:20 hours at
Nyehunge Police Station and gave detailed information on how he arrived at Butiama and

his activities of cow keeping and shifting of livestock owners, including Mr. Benard Jacob, Mr. Warioba Mbatila and Rashid Ally @ Hassan @ Muhaya (the deceased). The second accused also provided detailed account on how the murder incident of the deceased was planned, handled and executed. 2 In the circumstances of the present case, it cannot be said that TWD1 was threatened or tortured. I have also considered evidence of TWPl during the time of arrest and recording of the second accused's statement, and I think it was recorded within the time prescribed under section 50 (1) (a) of the Act. Before I pen down, it should be noted that in the present case, distinct scenarios have been displayed: Initially, the second accused, had testified that he was forced to record the statement by TWPl; at some point, he totally refused to have recorded any statement at any police stations; and finally, he testified that it was a police officer TWPl, who was producing and recording statement on his own and forced him to sign the statement. The changes of testimonies of TWD1 go to the root of the matter whether he was recorded or not, and shakes his reliability and credibility. Finally, TWD1 had prayed to withdraw his points of protests in favor of the confessional statement so that it can be tabled in the main case to display the truth of the matter. In the totality of evidence produced in trial within trial, I am convinced that the cautioned statement of the second accused may have been taken within time without any breach of section 50 (1) (a) of the Act, and that there is possibly no torture which was exerted to the second accused in extracting the confession to violate the enactment of section 27 (3) of the Evidence Act. 3 In the end, the cautioned statement may be admitted in the main suit in accordance to the practice and procedure of criminal session cases. The two (2) points of objection raised by the Defence Attorneys are hereby overruled. Ordered accordingly. This Ruling was pronounced in open court in the presence of the accused persons, Mr. John Mbatira @ Mtupe, Mr. Sadick Shabani @ Yohana, Mr. Manga Mgonoki, and Mr. Steven Augustino @ Odiero, and their learned Defence Attorneys, Mr. Baraka Makowe, Mr. Daud Mahemba, Mr. Amos Wilson and Mr. Victor Kisaka and in the presence of Mr. Tawabu Yahya Issa and Ms. Evangelina Ephrahim Mukarutazia, learned State Attorneys for the Republic. E^ulya) Judge 27.09.2023 4

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