

TANZANIA / JUDGMENT

PEDITO ONE

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18 February 2025

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA DAR ES SALAAM SUB
REGISTRY AT DAR ES SALAAM CRIMINAL SESSION NO. 96 OF 2023

REPUBLIC VERSUS PEDITO HERMAN ILIMU

RULING

Date of last order: 18th February 2025 Date of Ruling: 19th February 2025 MTEMBWA, J.: The accused herein stands arraigned in two counts for the offense of Murder contrary to sections 196 and 197 of the Penal Code, Cap 16, RE 2022. In both counts, it was alleged that on 27th December 2022, at Mbwela area within Bagamoyo District in Coast Region, the Accused murdered JEREMIA RAMADHANI and RASHID HERI RAJABU. The Accused resisted the accusations. Consequently, the Republic had to adduce evidence in support of the charge. When PW11 sought to tender the Extrajudicial Statement he recorded, two objections were taken by the learned defense counsel. In the first 1 objection, the learned counsel argued that, the Extrajudicial Statement was taken in serious contravention of the Chief Justice Guidelines as underscored in the cases of Mashiku Kidesheni and Another vs. Republic, Criminal Appeal No. 586 of 2017 Court of Appeal of Tanzania at Mwanza. Expounding further on the objection, the learned counsel argued that the one who recorded it did not ask the Accused if anyone threatened or promised him. What was asked was whether he was threatened or persuaded by any police officer. He added that the guidelines did not require the suspect to be asked whether the police officer threatened him but rather whether he was threatened by “anyone.” Close to that, he contended that the phrase “anyone” covers anyone outside of the Police Force. The learned defense counsel observed that the Chief Justice guidelines require the justice of peace to ask if the suspect is ready to give his statement voluntarily. He contended that the phrase “nimemuuliza kama yupo tayari kutoa maelezo yake” did not, at any rate, mean that the suspect (Accused) was ready to give his statement voluntarily as a free agent. He considered the statement to have been taken in non-compliance with the Chief Justice Guideline. 2 With regard to the second objection, the learned defense counsel argued that the Accused gave his statement in blatant and serious contravention of sections 27 (3) and 28 of the Evidence Act as he was not a free agent. He further observed that the statement was not given voluntarily. Based on that, he implored this Court to sustain the objections and disregard the Extrajudicial Statement. On her part, the learned state attorney considered that the

objections were raised out of context. In response to the first objection, the learned state attorney submitted that the Extrajudicial Statement was taken in compliance with the Chief Justice's Guidelines as the Accused was accordingly asked whether any person persuaded or promised him. Although he was asked whether he was promised or persuaded by a police officer, she observed that the question asked saved the purpose and sufficed and served the day. Looking at the Accused person's reply to the question, it means no one persuaded him. In response to the second preliminary objection, the learned state attorney briefly contended that the Accused gave his statement while he was a free agent. She insisted that the Accused volunteered to state without any threat or promise. Based on that, she implored this Court to overrule the objections. In rejoinder, the learned defense counsel insisted that the phrase "any person" or "anyone" intended to cover any human being, even those outside the police force. He further stated that the accused needed to be asked whether he was ready to give his statement voluntarily before the justice of the peace. Based on that, he reiterated his earlier position that the objections be sustained. Indeed, I need not to overemphasize that the justice of peace must, at any rate, comply with Chief Justice Guidelines before taking an Extrajudicial statement. The mandatory requirement to follow them assists the trial Court in examining whether the suspect gave his statement voluntarily and whether or not there were any threats or promises. Such position was also bolstered in the case of *Martin s/o Fabiano and Another vs. Republic*, Criminal Appeal No. 84 of 2020 (unreported), which followed the earlier decision of the Court in *Japhet Thadei Msigwa vs. Republic*, Criminal Appeal No. 367 of 2008 (unreported). In the latter case, the Court observed that: We think the need to observe the Chief Justice's Instructions [is] twofold. One, if the suspect decided to give such statement he should be aware of the implications involved. Two, it will enable the trial court to know the surrounding circumstances under which the statement was taken and decide whether or not it was given voluntarily. Non-compliance will normally render the statement not to have been taken voluntarily. From the above, it is clear that the main purpose of adhering to the Chief Justice Guidelines is, among others, to test for the voluntariness or whether the suspect was a free agent before the justice of the peace. In this case, the learned defense counsel observed that the Accused was not asked questions regarding whether he was free and voluntary to give his statement. Contrary to the Chief Justice Guidelines, he was only asked whether he was ready to give his statement. As correctly alluded to by the learned defense counsel, which I find to be correct, the steps enunciated in the Chief Justice's Guidelines as laid in the case of *Japhet Thadei Msigwa* (supra), which was later followed in *Mashiku s/o Kidesheni & Another vs. Republic* (Criminal Appeal No. 586 of 2017) [2021] TZCA 306 (15 July 2021), are mandatory. In the former case, the Court summarized the steps a justice of Peace must take before recording an extra-judicial statement as follows; 5 Before the Justice of the Peace records the confession of such person, he must make sure that all eight steps enumerated therein are observed. The Justice of the Peace ought to observe, inter alia the following

- (i) The time and date of his arrest; (ii) The place he was arrested; (iii) The place he slept before the date he was brought to him; (iv) Whether any person by threat or promise or violence has persuaded him to give the statement;

(v) Whether he really wishes to make the statement on his own free will; (vi) That if he make a statement, the same may be used as evidence against him, ' [Emphasis added] The learned defense counsel contended that the phrase “nimemuuliza kama yupo tayari kutoa maelezo yake” did not, at any rate, entail that the suspect (Accused) was ready to give his statement voluntarily. He considered the statement to have been taken in non-compliance with the Chief Justice Guideline. On her part, the learned state attorney insisted that the Accused gave his statement voluntarily as a free agent. I looked at the impugned Extrajudicial Statement recorded by PW11, and this is what I encountered. Nimemuuliza kama yupo tayari kutoa maelezo naye ajibu 6 “ndio nipo tayari kutoa maelezo” With respect to the learned state attorney, such a question to the Accused was vague and its answer by him was uncertain. It cannot be safely arrived at that in response to the question, the Accused meant he was ready to give his statement voluntarily as a free agent. The use of the phrases “kwa heyari yako” and “bila kulazimishwa au kushurutishwa” and the like, implying free will or voluntariness, would have served the purpose. Even for the sake of argument that he was ready to give his statement, it would not necessarily mean that he was a free agent at the moment. From what I have tried to endeavor herein above, it goes with certainty that PW11 did not observe the Chief Justice's Guidelines. It must be noted that the Chief Justice Guidelines are not cosmetic and were not promulgated in vain. They were intended to test the suspect's voluntariness and free will before the Justice of the Peace takes his or her extrajudicial statement. The questions asked, therefore, must directly correspond with the intended purposes, short of which the statement will be held to have been taken in blatant disregard of the Guidelines. That said, I see no reason to look into other preliminary objections raised by the defense counsel. 7 To that end, the preliminary objection raised to the admissibility of the Extrajudicial Statement recorded by PW11 is sustained for failure to observe the Chief Justice Guidelines. In the circumstances, it will not be received and admitted in evidence. I order accordingly. Right of appeal explained. DATED at DAR ES SALAAM this 19th February 2025. H.S. MTEMBWA JUDGE 8

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