

UGANDA / JUDGMENT

Rex v Muriemoi (Cr. App. No. 140 of 1938) [1938] EACA 154 (1 January 1938)

[1938] EACA 154

COURT

East African Court of Appeal

BEFORE

Dalton, C.J(Tanganyika), Sheridan, (C.J. Kenya),
Whitley CJ

CASE / FILE NUMBER

Cr. App. No. 140 of 1938

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COURT OF APPEAL FOR EASTERN AFRICA

BEFORE SIR JOSEPH SHERIDAN, C. J. (Kenya), SIR LLEWELYN DALTON, C. J. (Tanganyika), AND WHITLEY, C. J. (Uganda)

REX. Respondent (Original Prosecutor) v.

MATHENGE s/o MURIEMOI, Appellant (Original Accused) Cr. App. No. 140 of 1938

Appeal from conviction by H. M. Supreme Court of Kenya.

Criminal law and procedure—Evidence—Confession—Duty of magistrate before whom a confession or statement is sought to be made—Procedure where admissibility of confession is questioned.

The case against the appellant rested largely upon a statement made by him to a magistrate two days after his arrest in these circumstances: appellant began to make a statement to an assistant inspector of police, who informed him that anything he wanted to say should be said to a magistrate, and then used these words: "It might be better for you to make a statement. It might do you good; it might not. It is entirely up to you whether you wish to do so or not." The magistrate cautioned the appellant and did all he could to dissuade him from saying anything.

The other evidence corroborated the confession.

Held \$(21-11-38)\$.-(1) That police officers should be careful to avoid addressing to accused persons any words such as "It would be or might be better for you to make a statement".

- (2) That the statement was admissible (a) because there was never at any time, any suggestion by the appellant that what the inspector said to him operated on his mind as an inducement; and (b) because even if an inducement was held out by the inspector the appellant was clearly undeceived by the magistrate.

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- (3) That the only duty of the magistrate before recording such statements is to satisfy himself that the statement is voluntary and has not been induced by any promise or threat. It is in the interest of justice that if an accused person genuinely wishes to make a statement he should be allowed to do so and not dissuaded.
- (4) That the proper course where objection is raised as to the admissibility of an alleged confession is for the judge to hear evidence in the absence of the assessors as to the circumstances leading up to the recording of the confession and to rule upon that evidence whether the alleged confession should be admitted or not.

Hourly for the appellant.

Bennet, Ag. Crown Counsel (Tanganyika), for the Crown.

JUDGMENT (delivered by Whitley, C. J.).—The admitted facts in this case were that the appellant, a forest guard, who already had one wife, wished to take as second wife a girl named Watahi who lived in Nyeri, some distance away. She went to live with him for some weeks. On Saturday, the 25th June, Wambugu, the brother of the deceased, and Rubens, the brother of the accused, made a report to Inspector Mackintosh. They took him to a spot in the bush about 500 yards from the accused's house where he found the body of Watahi. A silk handkerchief had been stuffed into her mouth and the medical evidence established that death had been caused by strangulation and suffocation. There was a severe bruise on the abdomen.

The case against the appellant rested largely upon a statement made by him to a magistrate on the 27th June, two days after his arrest. It was argued that this statement ought not to have been admitted because, it was submitted, it had been made as the result of an inducement offered by the Assistant Inspector of Police, who in his evidence stated that when the appellant began to make a statement to him, he informed him that anything he wanted to say should be said to the magistrate. The inspector then used these words: "It might be better for you to make a statement. It might do you good; it might not. It is entirely up to you whether you wish to do so or not." On the authorities it is arguable that those words might be regarded as an inducement. We are certainly of opinion that it is desirable that police officers should be careful to avoid addressing to accused persons any words such as, "It would be or might be better for you to make a statement." In the present case, however, there are two reasons why the use of the words in question cannot have the effect of rendering the statement subsequently made inadmissible. Firstly, there has never at any time been any suggestion on the part of the appellant that what the inspector said to him operated upon his mind as an inducement. What the appellant, in effect, says is that the inspector told him to go to the magistrate, as the latter might want to ask something; that he

thereupon went to the magistrate and made the statement; that what he said to the magistrate was true and was accurately recorded, but that the appellant was referring to an earlier date in May and not to the date of the deceased's death. As stated in Archbold, 30th Edition, page 397, the only proper questions are whether the inducement held out was calculated to make the statement an untrue one and whether the inducement continued to operate at the moment of the statement. The answers to both these questions must here be in the negative, so that the statement is admissible. Secondly, even if an inducement was held out by the inspector, the appellant was clearly undeceived by the magistrate and that would be sufficient to render the statement admissible (2 East P. C. 658). The magistrate here cautioned the appellant in the most emphatic manner. Indeed, in our opinion, he went too far by doing all he could to dissuade the appellant from saying anything. The only duty of the magistrate before recording such statements is to satisfy himself that the statement is voluntary and has not been induced by any promise or threat. It is in the interests of justice that if an accused person genuinely wishes to make a statement he should be allowed to do so and not dissuaded. It is frequently also in the best interests of the accused himself that his version should be placed on record at the earliest possible moment, inasmuch as what he says may have the effect of exculpating him either wholly or to some extent and he is more likely to be believed if he has consistently given the same account from the outset,

We would add that the proper course where objection is raised as to the admissibility of an alleged confession is for the judge to hear evidence in the absence of the assessors as to the circumstances leading up to the recording of the confession and to rule upon that evidence whether the alleged confession should be admitted or not. He cannot decide that question by merely looking at the depositions himself (*R. v. Chadwick*, 24 Cr. App. R. 138). If he is of opinion that a promise of favour or any menace or undue terror was made use of to induce the accused to confess and that the accused was induced by such promise, etc., to confess, he will reject the confession, If, on the contrary, it appears to him that although such promises, etc., were held out, they did not operate upon the mind of the accused but that his confession was voluntary notwithstanding and he was not biased by such inducement in making it, the judge will admit the evidence of the confession.

The next point taken upon the appeal was that the alleged confession was in fact no confession at all. What the appellant said was shortly as follows: "I am charged with the murder of my wife. I beat her because she had venereal disease and refused to go to hospital so that I could not have intercourse with her. She fell, got up and ran away. Later her brother found her dead. She must have fallen on something hard." The appellant insists that he was referring to an incident which took place a month before the death. We find ourselves unable to believe that assertion. We consider it clear from the wording that he was describing what happened on the day of his wife's death. It is true that he does not say that he strangled her or that he killed her but, as was pointed out by this Court in the case of *Rex v. Njogira* (Cr. App. No. \$60/36\$), there is no reason why a confession should contain the whole truth or be wholly true, provided it appears to be sufficiently true. It has, of course, to be considered in conjunction with the other evidence, and in our opinion that other evidence affords ample corroboration of the statement and establishes further

what the appellant left unsaid, that he actually killed his wife. The witness Rubens stated that the appellant told him that he had killed his wife and where her body was. Rubens repeated this to Wambugu, the deceased's brother, and together they found the body where the appellant had said they would. The learned trial judge took into account the criminal record of Rubens, and in spite of that he believed him. We see no reason for holding that he was not right in so doing. It is clear from the very full and careful judgment that he duly considered every aspect of the case, and in our opinion the conviction was a proper one. The appeal is dismissed.

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Prepared on 13 October 2026 · Esheria