

THE UNITED REPUBLIC OF TANZANIA

(JUDICIARY)

THE HIGH COURT

(MUSOMA SUB REGISTRY)

AT MUSOMA

ORIGINAL JURISDICTION

CRIMINAL SESSIONS CASE No. 24 OF 2023

THE REPUBLIC v. 1. MGWASI JUMANNE @ WAPORI

2. MULABU MURUNGU @ MUYA

**RULING ON THE APPLICATION OF SECTION 57 (4) OF THE CRIMINAL
PROCEDURE ACT [CAP. 20 R.E. 2022]**

10.10.2023 & 10.10.2023

Mtulya, J.:

The present accused persons, **Mr. Mgwasi Jumanne @ Wapori** and **Mr. Mulabu Murungu @ Muya** were arrested and brought in this court to reply the information murder of **Ms. Nyabise Webiro** (the deceased) contrary to sections 196 and 197 of the **Penal Code [Cap. 16 R.E. 2022]** (the Penal Code). The offence is allegedly occurred on 25th September 2022 at Nyegina Village within Musoma District in Mara Region.

In order to substantiate its case, the Republic has brought a total of five (5) witness whereas the defence had summoned two witnesses in protest of the allegation. During the hearing of prosecution witness number five, police officer **G.2705 D/Cpl. Isaya** (PW5), prayed to tender a cautioned statement of **Mr. Mulabu Murungu @ Muya** (the second accused).

However, the prayer faced with two points of protest raised by the learned Defence Attorneys, **Mr. Cosmas Tuthuru** and **Mr. Daud Mahemba** for want of proper application of section 57 (4) (a) to (e) of the **Criminal Procedure Act [Cap. 20 R.E. 2022]** (the Act) and section 50 (2) of the Act. In order to substantiate their protests, the dual had cited the precedents in **Chamuriho Kirenge @ Chamuriho Julias v. Republic**, Criminal Appeal No. 597 of 2017 and **Juma Omary v. Republic**, Criminal Appeal No. 568 of 2020.

According to the learned Defence Attorneys: first, the second accused was not afforded the rights as enacted in section 57 (4) (a) to (e) of the Act as the cautioned statement is silent on the indicated rights; and second, the second accused was arrested at 08:00 hours, morning time and recorded cautioned statement in evening time, 17:05 hours.

Replying the submission, **Ms. Agma Haule**, learned State Attorney for the Republic thought that the points of objection have no merit for two reasons, namely: first, the facts do not support the allegation as PW2 cited the time of arrest as 13:00 hours whereas PW4 and PW5 have cited the time of arrest 14:00 hours and the accused was recorded cautioned statement at 17:00 hours; and second, PW5 has explained in this court what had transpired before, during and after recording the cautioned statement.

In the opinion of Ms. Haule, if there was any delay in time in bringing the second accused from Bwasi area via Mugango Police Station to Musoma Police Central Station, the delay will be captured by the enactment of section 50 (2) (a) of the Act. Ms. Haule submitted further that the meaning of signing certificate at the end of recording as enacted in section 57 (4) (e) of the Act means authentication of the cautioned statement by entering signature in words or thumbprint and that both PW5 and the second accused authenticated the record.

In brief rejoinder, the Defence Attorneys insisted their initial submission contending that the law in section 50 (2) (a) of the Act is silent on which kind of police station and that the statement was recorded in a special police form which violates section 57 (4) (a)–(e) the Act and accused persons' rights.

I have scanned the submissions of learned counsels in the present dispute and consulted enactments in sections 50 (1) (a), (2) (a) and 57 (4) (a)–(e) of the Act and precedents in **Chamuriho Kirenge @ Chamuriho Julias v. Republic** (supra) and **Juma Omary v. Republic** (supra) on the interpretation of section 57 (4) (a) to (e) of the Act.

The record shows that investigation officer PW4 and recording officer PW5 have testified that the second accused was arrested on 1st November 2022 at 14:00 hours and recorded P.2 on the same

day at 17:05 hours. This complaint on time limitation cannot detain this court as there is in place enactment of section 50 (2) (a) of the Act which allow delay in relation to any act connected to the investigation. In the present case, if we take the materials produced by prosecution witnesses PW4 and PW5, the recording was within four hours' time period. If we take the evidence of PW4, the second accused was arrested at 13:00 hours.

However, in the present case facts show that the case was reported at Musoma Police Central Station and the investigation was taking its course at the Central Police whereas the second accused was arrested at Bwasi area and was ferried to Mugango Police Station and later Musoma Police Central Station, and arrived police station before 17:00 hours and started recording statement at 17:05 hours.

I think section 50 (1) (a) was complied, and even if not, section 50 (2) (a) of the Act may be invited to resolve the matter. In any case, even if the time is calculated from 13:00 hours as it was indicated by PW2, the Defence Attorney declined to state on how a five (5) minutes delay can prejudice the second accused.

Similarly, regarding the application of section 57 (4) (a) to (e) of the Act, I think it was complied as was well explained by PW5 during the hearing of the case. The precedents of the Court in **Chamuriho Kirenge @ Chamuriho Julias v. Republic** (supra) and

Juma Omary v. Republic (supra) are inapplicable in the present circumstances.

In the precedent of **Chamuriho Kirenge @ Chamuriho Julias v. Republic** (supra), as indicated at page 18 of the judgment, exhibit PE.2 did not indicate if it was read over to the appellant during the hearing of the case. Again, the precedent is silent on whether the document had been printed to have complied with section 57 (4) (e) of the Act. In the precedent of **Juma Omary v. Republic** (supra) the complaint is indicated at page 5 of the decision that the exhibit was certified under section 10 (3) of the Act instead of section 57 of the Act.

In the present case, I scrutinized exhibit P.2 recorded by PW5 and found that it complies with the law in section 57 (4) and indicated at the very bottom of page 3 by the use of the words: *Mimi G. 2705 D/Cpl. Isaya nathibitisha kuwa maelezo haya ya onyo ya Mulabu Murungu @ Muya nimeyaandika kwa usahihi na uaminifu chini ya kifungu namba 57 (4) cha Sheria ya Mwenendo wa Mashauri ya Jinai Sura 20 kama ilivyofanyiwa marekebisho Mwaka 2022.* With such citation, I think it is vivid that the statement indicates compliance with the law and in any case, it is neither silent or cited section 10 (3) of the Act.

Having said so, I am moved to overrule the two (2) points of objection raised by the Defence Attorneys and hereby admit

cautioned statement of the second accused, **Mr. Mulabu Murungu @ Muya** recorded by police officer **G. 2705 D/Cpl. Isaya** (PW5) on 1st November 2022 at 17:05 hours at Musoma Police Central Station and the same is hereby marked as exhibit P.2.

It is so ordered.




F.H. Mtulya

Judge

10.10.2023

This Ruling was pronounced in open court in the presence of the accused persons, **Mr. Mgwasi Jumanne @ Wapori** and **Mr. Mulabu Murungu @ Muya** and their learned Defence Attorneys, **Mr. Cosmas Tuthuru** and **Mr. Daud Mahemba** and in the presence of **Ms. Agma Haule** and **Ms. Happiness Machage**, learned State Attorneys for the Republic.


F.H. Mtulya

Judge

10.10.2023