



REPUBLIC OF KENYA



**KENYA LAW**  
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**Republic v Buruk (Criminal Case E016 of 2021)  
[2022] KEHC 11660 (KLR) (24 May 2022) (Ruling)**

Neutral citation: [2022] KEHC 11660 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BUSIA  
CRIMINAL CASE E016 OF 2021**

**JR KARANJA, J**

**MAY 24, 2022**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**SAMWEL OMBIMA BURUK ..... ACCUSED**

**RULING**

1. The main objective of the trial within a trial was to determine whether or not the statement of confession (P.MFI 2) said to have been made by the accused was voluntary and therefore admissible in evidence.

The accused denied the voluntariness of the statement and implied that it was not obtained in accordance with the applicable rules. However, the prosecution's contention was on the contrary.

2. Basically, the "rule of the thumb" in relation to confessions or any statement appertaining thereto is that a confession or any admission of a fact leading to the proof of guilt is not admissible and shall not be proved against the accused unless it was made in court before a judicial officer or before a police officer not below the rank of inspector of police and a third party of the accused's choice (see, S.25A of the *Evidence Act*).
3. The recording or taking of such statements is governed by the *Evidence (out of court confessions) Rules 2009*, which were enacted pursuant to S.25A (2) of the *Evidence Act*.

Under Rule 13 of the Rules, the recording officer shall be the proper prosecution witness to prove to the court beyond reasonable doubt that the Rules were complied with. In this case, the key prosecution witness in that regard and indeed, in this trial within a trial was Chief IP Jebason Okongo (PW 5). He indicated that the confession herein (P.MFI 2) was recorded by himself in compliance with the rules and in particular Rules 4,5,7,8,9 and 10. This was confirmed by the certificate of confession signed by himself and countersigned by way of a thumbprint by the accused whose evidence herein failed



to disprove the prosecution's contention that he did actually record the confession voluntarily after having been arrested at Adungosi police station and taken to Amukura police station to record the statement.

4. In sum, the prosecution case in this trial within a trial was proved beyond reasonable doubt. The confession statement (P.MFI 2) was voluntary and admissible in evidence. It may therefore be formally tendered as evidence in the main trial.

Ordered accordingly.

**J.R. KARANJAH**

**J U D G E**

**[DATED AND DELIVERED THIS 24<sup>TH</sup> DAY OF MAY 2022]**

