

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT MERU

Criminal Case 65 of 2005

REPUBLIC PROSECUTOR

VERSUS

KIRAMBIA ICHERIA ACCUSED

RULING

This ruling relates to an objection to the production of an Occurrence Book (O.B.) entry No. 6 of 25th May 2005 at 15.58Hrs. In the course of his testimony, PW4 – P.C. Patrick Muthuri told the court that the accused went to Makutano Police Post and made a report of how he tried to stop the deceased and another man who had cut and were carrying away trees from shamba but the duo took to their heels.

The witness was in the process of stating that the accused admitted having caused the death of the deceased when this objection was raised. The objection is to the effect that what the witness was getting at is prohibited by the provisions of section 25A of the Evidence Act as it amounts to a confession which can only be made in court and secondly that the witness being a police constable is incompetent to receive such confession.

It was argued for the state that what the witness sought to produce is a police record received by a police officer as an initial report. That that report did not amount to a confession but is a material and proper evidence. That it was admission as defined in Section 17 of the Evidence Act, which is not subject to subsequent provisions of the Evidence Act.

That the drafters of this legislation must have intended that admissions be relied on in trials. It was further submitted the statement in question did not come within the provisions of section 25A of the Evidence Act.

I have duly considered these submissions and hold the following opinion. The accused had denied having committed the offence of murder hence this trial. The crux of the statement contained in the O.B. is to the effect that he admitted to P.C. Patrick Muthuri for having committed the offence. That was on 25th June 2005 after Act No. 5 of 2003 had been introduced in the Evidence Act by the enactment of section 25A, which restricts the receiving of a confession or admission.

It provides:-

“25A. A confession or any admission of a fact tending to the proof of guilt made by an accused person is not admissible and shall not be proved as against such person unless it is made in court.”

The above provision therefore restricts confessions to only those made in court. However, section 29 of the Act provides that a confession can be made to a police officer of or above the rank of inspector.

The word confession is defined both in sections 25 and 32(2) of the Act. The former defines it as comprising:-

“.....words or conduct or a combination of words and conduct, from which, whether taken alone or in conjunction with other facts proved, an inference may reasonably be drawn that the person making it has committed the offence.”

The latter defines confession to mean:-

“.....any words or conduct, or combination of words and conduct which has the effect of admitting in terms either an offence or substantially all the facts which constitute an offence.”

If the accused therefore went to the police station and stated that he attacked the deceased as he was fleeing with the trees then clearly that comes squarely within the meaning of a confession as reproduced above. To argue that an admission is admissible is to split hairs. As a matter of fact the admissibility of an admission under section 21 of the Evidence Act is subject to the provisions of the Act.

If the accused by word of mouth said things that suggest that he was admitting either that he had committed an offence then such statement could not be received by P.C. Patrick Muthuri as it amounted to a confession.

For these reasons the O.B. entries sought to be produced in evidence are inadmissible and I so order.

Dated and delivered at Meru this 26th day of September 2008.

W. OUKO

JUDGE