

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
H.C. CRIMINAL CASE NO. 51 OF 2002

REPUBLIC PROSECUTOR

V E R S U S

SAMUEL MUIRURI MWANGI

ROBERT HUNJA NJAMBAACCUSED

R U L I N G

The 1st Accused objected to the production of statement under inquiry dated 29th December, 2001 on grounds that he has never made any such statement voluntarily and was never a party to its contents, and that after he was subjected to serious beatings by Police officers including Inspector Makokha he only signed some papers.

The prosecution called Inspector Makokha who deponed that on 29th December, 2001 he was instructed by O.C.S. Lari Police Post to record a statement under inquiry from a suspect (now the 1st Accused) who was alleged to have committed an offence of murder. He stated all the procedures be stipulated under Judges' rules, which he adopted before and after the 1st Accused voluntarily gave statement. He emphasized that 1st Accused chose to state his statement which he recorded and read back. He denied that the 1st accused was beaten as alleged or put up by the Defence Counsel. He also stated that he was not the investigating officer although he agreed he was O.C. (Crime) in Lari Police Post.

The 1st Accused this time gave an unsworn statement and specifically stated that from 17th December, 2001 the day after his arrest he was beaten by five officers (he did not name any) after every three days with batons and whips and that they were asking him to accept that he had killed the deceased. At the end of the year he was taken to a clinic and the doctor did not take any heed of his complaints of beatings. He also said that on 2nd January, 2002 he signed some papers when he was 'explained' that he had to sign them whether he wanted or not. On 3rd January, 2002 he was taken to the court and when Magistrate asked him whether he wanted to say anything, he responded that he would say, what he wanted to, before the High Court.

The 1st Accused had during trial within trial given sworn testimony and I must state he has contradicted himself in all relevant aspects of his evidence, especially the complaint of beatings. Thus I must find that the prosecution has proved beyond reasonable doubt that the statement was voluntary as prescribed under the law. I also add here that the details in the statement made could not be within the knowledge of police officers.

I therefore direct that the statement be admitted in evidence.

Dated and delivered at Nairobi this 19th day of June,

2003.

K. H. RAWAI

JUDGE.