

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

CRIMINAL CASE NO. 13 OF 2000

REPUBLIC ::::::::::::::::::::::::::::::: PROSECUTOR

VERSUS

MBUVI WAMBUA :::::::::::::::::::::::::::: ACCUSED

R U L I N G

The accused herein denied a statement that he allegedly gave to IP Githui when he was investigating the murder of Munyithya 10 Muthusi herein. It necessitated a trial within-a-trial. IP Githui said that the accused requested to see him and when he was brought, he offered to say all he knew about the death of Munyithya. That IP Githui cautioned him that if he said anything in connection with that murder, he IP Githui, would reduce it into writing and would produce it in evidence. That the accused who was among other suspects in the subject case, on his own dictated in Kiswahili what IP Githui recorded. In the statement apparently he admitted the offence.

The court heard that Pc. Mukira (P.W.3) brought in the accused and that he did not stay in the office when for a bout an hour the accused told IP Gthui about the murder.

IP Githui said that he was not armed and neither was Pc Mukira at the time the latter brought the accused. Pc. Mukira on his part while he said that he was armed, said that he did not know if IP Githui was. And while IP Githui said that he called Pc. Mukura to return the suspect to the cells, Pc Mukira said that IP Githui himself escorted 10 the accused back. On his own part the accused claimed that Pc. Mukira took him back into the cells.

While IP Githui told the court that the accused seemed to understand Kiswahili well, even when he did not inquire after his academic level, the accused maintained that he was illiterate all the way.

IP Githui went through the motions to demonstrate that the statement he took from the accused was voluntary. 20

On his part the accused said that he was escorted from the cells by P.C. Mukira who hit him with a gun and kicked him, to the office of IP Githui. That it was IP Githui who called for him. By this the accused seemed to want to contradict IP Githui and Pc Mukira that it was the accused, who on his own, requested to see IP Githui.

The accused said that not only was he assaulted and harassed as Pc. Mukira led him to the office of the O.C.S. (IP Githui) but that once there three officers – IP Githui, Pc Mukira another whose force 10 number the accused read from his palm as 51820 proceeded to threaten him. (The number 51820 turns out to belong to Pc. Mukira!) The accused continued that as IP Muthui directed him to sign documents on his table or he could be killed, the two other officers proceeded to prick him with sharp pins on the fingers of his, the accused's, hands. He denied that he did sign the statement that IP Githui was about to produce. That if anything he could have thumbprinted it.

In cross examination the accused who maintained that he was 20 totally illiterate (could not read or write) was at pains to explain who wrote for him the force No. 51820 on his palm which he even read to the court.

At the end of the day the court was not convinced that the accused did not sign the statement that IP

Githui took from him. He signed it and he could read and write. He was not forced to sign it either. The court was left with the view that the accused gave a voluntary statement to IP Githui which was recorded. 10

That statement may be produced in evidence.

Delivered on 30.4.2002.

J. W. MWERA

JUDGE