



Republic v Bett (Criminal Case 28 of 2018) [2025] KEHC 3552 (KLR) (20 March 2025) (Ruling)

Neutral citation: [2025] KEHC 3552 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
CRIMINAL CASE 28 OF 2018**

**JK SERGON, J
MARCH 20, 2025**

BETWEEN

REPUBLIC PROSECUTOR

AND

VINCENT KIPNGETICH BETT ACCUSED

RULING

1. Vincent Kipngetich Bett (“Accused Person”) is facing trial for the alleged murder of Samwel Kibet Too (“Deceased”). He was arraigned in Court on 21/11/2018. The accused person pleaded not guilty and the case took off on 8/11/2021 before Justice A. Ongeri and six witnesses testified before Chief Inspector Charles Ocharo was called as PW7.
2. During his testimony, Chief Inspector Charles Ocharo sought to produce a statement made by the accused person at the police station while in police custody. The Defence objected to the production of the statement and Justice A. Ongeri ordered a trial within a trial to determine the admissibility of the confession statement. The trial within a trial was conducted before Justice J.K. Sergon.
3. At the trial-within-a-trial, the Prosecution called two witnesses and the Accused Person testified for the Defence.
4. CIP Charles Ocharo testified that the confession of the accused person was taken on 21.10.2018 at Fort Tenan Police Station pursuant to the provisions of Section 25 of the *Evidence Act*. He testified that the accused had surrendered himself to the law enforcement officers and that he nominated his uncle Paul Kiptabut Too as a third party when recording his confession. He testified that he cautioned the accused that the confession would be used as evidence in court and that the accused and Paul Kiptabut Too, the third party, signed the confession. He testified that the accused in his confession statement stated that on 19.10.2021, he and his father were embroiled in a squabble when he shot at his father with an arrow. The accused surrendered himself to police custody on the following day. He testified that the confession was voluntary and that he wished to produce it as evidence. He testified that he



- prepared a certificate of confession. On cross examination, he stated that he was privy to the rules and guidelines on admissibility of a confession statement. He confirmed that the accused was informed on the right of counsel. He reiterated that he cautioned the accused. He confirmed that the confession was done in Kiswahili and that he translated the confession to English.
5. Paul Kiptabut Too testified that he knew that the accused was facing a charge of murder and that he was present when the accused recorded the confession statement. On cross examination, he confirmed that he signed the confession statement. On re-examination, he confirmed that the accused confessed out of his own volition.
 6. Vincent Kipngetich Bett, the accused, testified that he recorded his confession without an advocate. On cross examination, he stated that he was forced to record a confession statement before C.I.P Ocharo. He stated that he was beaten by a police officer and that he was told to sign the confession statement.
 7. I have considered the evidence adduced in favour of admissibility of the confession as well as the Accused Person's testimony against its admissibility against the applicable law.
 8. In Kenya, confessions are governed by the Constitution of Kenya 2010, the Evidence Act (Cap.80), the Evidence (Out of Court Confessions) Rules, 2009 and precedent. Article 49 of the Constitution guarantees each arrested person certain rights including the right to be informed promptly, in language that the person understands, of the reason for the arrest; the right to remain silent and the consequences of not remaining silent; to communicate with an advocate, and other persons whose assistance is necessary and not to be compelled to make any confession or admission that could be used in evidence against the person whereas Article 50 (4) of the Constitution specifically excludes the admissibility of any evidence obtained in a manner that violates any right or fundamental freedom in the Bill of Rights if the admission of that evidence would render the trial unfair, or would otherwise be detrimental to the administration of justice.
 9. As a general rule, confessions in Kenya are inadmissible in a criminal trial unless the confession is done within the rigorous rules provided in the Evidence Act and Rules promulgated thereunder.
 10. Section 25 of the Evidence Act defines a confession as follows: "A confession comprises 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 an offence." whereas Section 25A of the Evidence Act, provides that:- "(1) A confession or any admission of a fact leading 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 before a judge, a magistrate or before a police officer (other than the investigating officer) being an officer not below the rank of inspector of police, and a third party of the person's choice.

(2) The Attorney General shall in consultation with the law society of Kenya, Kenya National Commission on Human Rights and other suitable bodies make rules governing the making of a confession in all instances where the confession is not made in court."
 11. Pursuant to the aforementioned sub-section (2) of Section 25A of the Evidence Act, the Evidence (out of court confession) Rules, 2009, were enacted, more specifically Rule 4(1) which outlines the rights of an accused person when he is recording a confession, the said rule is as follows;
 4. where an accused person intimates to the police that he wishes to make a confession, the recording officer shall take charge of the accused person and shall ensure that the accused person-
 - a. Has stated his preferred language of communication;



- b. Is provided with an interpreter free of charge where he does not speak either Kiswahili or English;
- c. Is not subjected to any form of coercion, duress, threat, torture or any other form of cruel, inhuman or degrading treatment or punishment;
- d. Is informed of his right to have legal representation of his own choice;
- e. Is not deprived of food, water or sleep;
- f. Has his duration, including date and time of arrest and detention in police custody, established and recorded;
- g. Has his medical complaint, if any, adequately addressed;
- h. Is availed appropriate communication facilities; and
- i. Communicates with the third party nominated by him under paragraph (3) prior to the caution to be recorded under Rule 5.”

12. Having considered the governing law on confessionary statements, it is clear that the recording officer adhered to the rigorous process set out in the law. The accused stated that he was forced to record his statement, however, Paul Kiptabuk Too a third party who was present when the accused recorded his statement, confirmed that the accused confessed out of his own volition. The accused stated that he was beaten, however, he failed to register any medical concerns when recording his statement. The accused stated that he had no legal representation when the statement was recorded, however, he was informed of the right to have legal counsel but proceeded to record the confession without legal representation.

13. In the end, I find the Statement recorded by the Accused Person dated 21/10/2018 admissible in evidence in his own criminal trial. It is so ordered.

DATED, SIGNED AND DELIVERED AT KERICHO THIS 20TH DAY OF MARCH, 2025.

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J. K. SERGON

JUDGE

In the presence of:

C/Assistant – Rutoh

Prosecutor – Masisa

Accused – Present in Person

Nyadimo for the Accused

