



**Republic v Noor (Criminal Case E011 of 2023)
[2025] KEHC 4654 (KLR) (10 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 4654 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT GARISSA
CRIMINAL CASE E011 OF 2023
JN ONYIEGO, J
APRIL 10, 2025**

BETWEEN

REPUBLIC PROSECUTION

AND

MOHAMED ABDULLAHI NOOR ACCUSED

RULING

1. The accused person herein was charged with the offence of murder contrary to Sections 203 as read out with Section 204 of the *Penal Code*. The particulars are that, on 11.09.2023, at Dasheq in Tarbaj sub county within Wajir County he unlawfully murdered Saadiya Adow Alasow.
2. Having pleaded not guilty, the matter proceeded to full trial. On 13.02.2025, during the hearing, PW8, CIP Vincent Ondolo testified that he took part in recording a confession of the accused person. That the accused person was presented to him as a suspect in a murder case for purposes of recording a confession. He stated that the accused person was in company of other officers and his sister Shima Abdullahi.
3. That before he administered the caution, he asked the accused then a suspect whether he wished to have anybody present during that session. That he chose his sister Shima who was present to attend and also act as his interpreter. That he read the rules of confession and Shima Abdullahi translated the same to the accused person. He recorded a 6-page statement, which he later sought to produce as evidence.
4. Defence counsel, Mr. Bosire, opposed the production of the statement, arguing that the officer did not explain nor display the confession rules to the accused. He contended that the accused was not accorded an interpreter as he did not understand neither English nor Swahili. Equally, he took issues with the fact that the purported interpreter failed to sign the interpretation certificate. He urged the court to conduct a trial within a trial to determine the admissibility of the confession.



5. The learned prosecution counsel, Mr. Okemwa opposed the application urging that the accused person was properly cautioned before recording his statement admitting the offence. That it was the accused person's sister who offered to be an interpreter after signing that she was ready to interpret. Additionally, that the accused person was medically fit at the time when the statement was recorded.
6. Having considered the objection herein, the court ordered for a trial within a trial to be conducted.
7. During the hearing, PW1 Shima Abdullahi sister to the accused, told the court how she was summoned to Wajir DCIO's office where accused her brother was held for an offence she did not know. That she was asked to translate some statement to her brother who admitted holding the deceased on the neck but she died by mistake. She stated that she signed the translation.
8. PW2, CIP Vincent Ndolo told the court how he administered a caution on the accused who voluntarily recorded a confession without any threat, coercion or influence. That it was the accused who chose his sister to be his interpreter. He stated that both the accused and his sister signed the confession which was an admission that accused had killed the deceased.
9. On his part, the accused denied admitting the offence. He denied signing the statement.
10. Mr. Bosire submitted that the rules of taking confession was not followed in that the officer who recorded the alleged confession was not called as a witness. Similarly, the accused person's sister who allegedly interpreted the confession did not attach a certificate of interpretation and therefore, the alleged confession was of no probative value to the case herein as the same was inadmissible.
11. In rebuttal, Mr. Owuor, counsel for the prosecution submitted that indeed the rules of procedure were followed in taking the confession. That the recording officer stated that the accused person voluntarily recorded the same and not to mention that he chose his sister as a witness and an interpreter for the exercise.
12. The court, having considered the application, objections, submissions, and applicable law, must determine whether the objection is merited.
13. In Kenya, confessions are governed by the *Constitution of Kenya*, 2010 the *Evidence Act* (Cap 80) and the Evidence (Out of Court Confessions) Rules, 2009 and not to mention a plethora of decided cases by our courts.
14. Articles 49 and 50 of the 2010 *Constitution* safeguards the rights of an arrested and accused person. Arrested/accused persons are guaranteed 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. Further, an arrested/accused person is guaranteed the right to refuse to give self-incriminating evidence and have any illegally obtained evidence excluded from the record.
15. As a general rule therefore, confessions are inadmissible unless proved that they were obtained in full compliance with the law. Section 25A of the *Act* reads as follows:

“25A(1) 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 before a judge, a magistrate or before a police officer (other than the investigating officer), being an officer not below the rank of Chief Inspector of Police, and a third party of the person's choice”.
16. *Rule 4* provides that, among other things, the recording officer:



- a. Shall ask and record the accused person's preferred language of communication;
 - b. Shall provide the accused person with an interpreter free of charge where he does not speak Kiswahili or English;
 - c. Shall ensure that the accused person is not subjected to any form of coercion, duress, threat, torture or any other form of cruel, inhuman or degrading treatment or punishment;
 - d. Shall ensure that the accused person is informed of his right to have legal representation of his own choice among others;
 - e. Shall ask the accused person to nominate a third party to be present during the confession and the particulars of the third party and the relationship to the accused must be recorded.
17. Additionally, Rule 10 states that,
- “in the case of a confession not recorded in English or Kiswahili, the recording officer shall ensure that it is translated into English and Kiswahili.”
18. In this case, it has been urged that the confession by the accused person cannot be admitted in evidence noting that certificate of interpretation was not attached.
19. The general rule on admissions applies that any statement allegedly made by the accused person to a party, in this case, the accused person's sister tending towards an admission is not proof that the statement was correct or proof that the accused committed an offence. Such statement will be tested against the rest of the evidence adduced before the court. The prosecution will still have to prove the charge against the accused person on the required standard of law. Accused does not claim any coercion, threat, influence nor intimidation. He merely denies that he did not sign yet the sister confirms that the two signed the statement.
20. In the case of *Njarura s/o Ndugo v R* (1944) EACA Vol XI 61, the Court of Appeal for Eastern Africa, expressed itself thus:
- “It is well settled that the decision of any question of fact or law upon which the admissibility of any piece of evidence depends is for the judge alone, and when once the voluntary character of a confession is challenged by the defence the judge should make a thorough inquiry. He should therefore hear the evidence on both sides, including, if it be tendered, that of the accused himself, upon the question whether or not the confession was extorted by pressure or obtained by improper means.”
21. I must add that in case the accused wishes, he still has a right to re-visit the admission of the evidence of PW8 in his case, if the court places him on his defence. This is well illustrated in the case of *Kanini Muli v Republic*, Cr. App. No. 238 of 2007, where the Court of Appeal held that even after the trial court has ruled a confession is admissible, the accused person is still entitled to call evidence to show that the confession cannot be acted upon. [Also see *Republic v Nicholas Ngugi Bangwa* [2015] eKLR, Nairobi HC Criminal case no. 49 of 2011].
22. A perusal of the statement reveals that both the accused and the sister signed the same. PW1 sister to the accused also confirmed that she was the interpreter. Failure to label the part signed as certificate of interpretation is a procedural technicality curable under Article 159 (2) (d). PW1 does not deny interpreting to her brother who admitted that he killed the deceased by mistake.



23. Having considered the evidence of PW8, the Chief Inspector of Police who took the accused person's confession (PW1 in the trial within a trial) together with submissions of both counsel, this court finds without doubt that the accused's confession was given voluntarily and it is admissible. Accordingly, the statement shall be admitted as an exhibit for the prosecution.

DATED, SIGNED AND DELIVERED IN OPEN COURT THIS 10TH DAY OF APRIL 2025

J. N. ONYIEGO

JUDGE

