



**Republic v Noor (Criminal Case E011 of 2023)
[2024] KEHC 12938 (KLR) (24 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 12938 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT GARISSA
CRIMINAL CASE E011 OF 2023
JN ONYIEGO, J
OCTOBER 24, 2024**

BETWEEN

REPUBLIC PROSECUTOR

AND

MOHAMED ABDULLAHI NOOR ACCUSED

RULING

1. Accused herein is charged with the offence of murder contrary to section 203 as read out with section 204 of the penal code. Having pleaded not guilty, the matter proceeded to full trial. When time for pw8 CIP Vincent Ondoro Barno came to testify, he told the court how the accused person made a confession that he was the one who killed the deceased. That the confession was voluntarily taken without any promise, undue influence nor intimidation in the presence of one Shina a relative of the accused.
2. When the witness attempted to produce the statement, Mr. Bosire for the accused vehemently opposed production of the same 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 Kiswahili. Mr. Bosire took issue with the purported interpreter’s failure to sign the interpretation certificate.
3. Secondly, Mr. Bosire took issue with the witnesses’ statement that the accused appeared confused when he appeared before him implying that the accused was not fit at the time capable of recording a statement.
4. On his part, Mr. Okemwa for the prosecution opposed the application. He stated that the accused was properly cautioned before recording his statement admitting the offence. Counsel submitted that it was the accused’s sister who offered to be an interpreter after signing that she was ready to interpret. Counsel contended that accused was medically fit when recording the statement.



5. I have considered the objection herein and the response thereof. I have also considered the oral submissions by both parties. The law governing taking of confessions is substantively provided under section 25A of the evidence Act and rules of confession of 2009. Under Section 25A, a confession is only admissible if taken before a judge, magistrate or a police officer of the rank of a chief inspector and above.
6. The 2009 confession rules a foresaid does provide the procedure or the requisite steps a recording officer ought to follow before extracting a confession. Most importantly, Section 26 of the evidence Act and rule 4 provide that a confession must be extracted voluntarily without any threat, duress, torture, promise or influence of any kind. Besides, Article 49(1)(d) of the constitution provides that nobody is to be compelled to make a confession nor admission.
7. The accused having repudiated the statement on account that; rules of procedure were not followed; he was not accorded proper interpretation in the language he understands and that he was not feeling well at the time of recording the statement, it will be proper for the court to interrogate the repudiated statement. See Sango Mohamed Sango & another vs Republic (2015) eKLR where the court cautioned against a trial court proceeding to admit a repudiated confession or statement.
8. Accused having challenged the statement, the only prudent thing to do is to conduct a trial within a trial to ascertain whether the alleged confession was properly taken. Accordingly, the court is stepped down to allow the court to conduct a trial within a trial.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 24TH DAY OF OCTOBER 2024

J. N. ONYIEGO

JUDGE

