



**Republic v Juma (Criminal Case E019 of 2022)
[2024] KEHC 12445 (KLR) (18 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 12445 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUSIA
CRIMINAL CASE E019 OF 2022
WM MUSYOKA, J
OCTOBER 18, 2024**

BETWEEN

REPUBLIC PROSECUTION

AND

CHRISTOPHER OWINO JUMA ACCUSED

RULING

1. Hon. TA Madowo, Senior Resident Magistrate, SRM, formerly of the Busia Chief Magistrate’s Court, testified on 8th October 2024, as PW10. She had recorded a confession from the accused, on 21st November 2022, and her testimony revolved around that. At the tail end of her testimony, when she was due to produce the confession statement, an objection was raised by Mr. Were, Advocate for the accused, on grounds that the recording of the said confession statement was not voluntary, as at the time of the recording of the statement, the accused was fatigued, and had been subjected to some form of undue influence by the police officers who had escorted him to the chambers of Hon. Madowo, SRM, for that exercise. He called for a trial within a trial of that statement.
2. Section 25A of the *Evidence Act*, Cap 80, Laws of Kenya, allows recording of confession statements by judicial and senior police officers, so long as the judicial officers are not the ones trying the case, and the senior police officers are not the ones investigating the matter. It was in that context that Hon. Madowo, SRM, handled the matter. Such a confession is said to be made out of court, and its recording is regulated or governed by the *Evidence (Out of Court Confessions) Rules, 2009*, which largely align that exercise to the fair trial principles stated in Articles 49 and 50 of the *Constitution* of Kenya, 2010.
3. Section 25A of the *Evidence Act* is to be read together with section 26, of the same Act, which provides for the inadmissibility of such confession statements, where it would appear, to the trial court, that the same had been caused by an inducement, threat or promise, with reference to the charge against the accused person, coming from a person in authority, giving the accused person a sense that he would gain some advantage, or making it to avoid some evil of a temporal nature. Section 27 adds that the



statement would be admissible, where the impression caused by such threat, inducement or promise had been fully removed.

4. The issue raised by the defence was not in the form or nature of a promise or inducement, but a threat, for it was suggested that there was some form of undue pressure exerted on the accused, by the police officers who escorted him to the chambers of Hon. Madowo, SRM. It was stated, in *Kanini Muli v Republic* [2014] eKLR (Kihara Kariuki PCA, Musinga & M’Inoti, JJA), that, whether the confession was recorded by a judicial or police officer, it is incumbent upon the trial court to satisfy itself that that confession was voluntary; and it was cautioned that a judicial officer, who records a confession, under section 25A of the *Evidence Act*, should not be a conveyor belt for mechanically recording statements and disposing of the makers of such statements.
5. That would cast a duty on the trial court, to try a confession statement, that has been objected to, to determine the circumstances under which it was made, for authenticity; to assess and determine whether or not it was recorded voluntarily; and to assist in the determination of its admissibility. See *Musili Tulo v Republic* Nairobi CACRA No 30 of 2013 (Waki, Ouko & Mohammed, JJA) and *Sango Mohamed Sango & another v Republic* [2015] eKLR (Makhandia, Ouko & M’Inoti, JJA).
6. Based on the above, I am duty-bound to conduct a trial within a trial, with respect to the confession statement, recorded by Hon. Madowo, SRM, on November 21, 2022, before a decision is made on its admissibility.

DELIVERED, DATED AND SIGNED, IN OPEN COURT, AT BUSIA ON THIS 18TH DAY OF OCTOBER 2024.

W MUSYOKA

JUDGE

Mr. Arthur Etyang, Court Assistant.

Ms. Eva Adhiambo, Legal Researcher.

Advocates

Mr. Were, Advocate for the accused person.

Mr. Onanda, instructed by the Director of Public Prosecutions, for the Republic.

