



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**CRIMINAL CASE NO.65 OF 2011**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**PRISCILLA CHERONO CHEBET.....1<sup>ST</sup> ACCUSED**

**EMMY JEPKOSGEY CHUMO.....2<sup>ND</sup> ACCUSED**

**JOSEPHINE CHELEL.....3<sup>RD</sup> ACCUSED**

**RULING**

1. This Ruling is in respect of trial within trial in this case. The trial within trial arose from the objection raised by the defence to the production of the confession statements purported to have been taken from the 1<sup>st</sup> and 2<sup>nd</sup> accused. The objection arose in the course of the testimony of No. 218745 SSP William Sakali Nangulu, (PW4). He told the court that he recorded confession statements from the 1<sup>st</sup> and 2<sup>nd</sup> accused. The defence objected to the statements on grounds that the same were not admissible. The court stepped down the witness and ordered a trial within trial to test the admissibility of the statements in question.

2. The prosecution called 3 witnesses. No. 56274,PC Jairus Mbondo testified as PW1. His testimony was that he arrested the 3 accused from their residence on 23<sup>rd</sup> August 2011 and handed them over to PC Mulatya. PW2 was No. 235074 Inspector Lawrence Mulatya. He told the court that he was the investigating officer in the case and that on 25<sup>th</sup> August 2011 the 1<sup>st</sup> and 2<sup>nd</sup> accused required to see the D.C.I.O. He made arrangements for each to see the D.C.I.O. He was not present in the D.C.I.O's office when the accused gave their statements.

3. No. 218745 SSP William Nangulu testified as PW3. He was the recording officer. He testified that while in his office on 24<sup>th</sup> August 2011, Inspector Mulatya (PW2) informed him that 2 suspects being the 1<sup>st</sup> and 2<sup>nd</sup> accused wanted to give him some information. He first attended to the 1<sup>st</sup> accused Priscilla. He cautioned her and informed her of her rights. She proceeded to give her statement. At the end of the recording session she confirmed and appended her signature. He followed the same procedure for the 2<sup>nd</sup> accused.

4. At the close of the prosecution case, the court invited parties to make submissions. The gist of the prosecution's submission is that the statements conformed to the law while defence maintained that there were breaches of the rules which rendered the statements inadmissible.

5. I have carefully considered the testimony of the 3 prosecution witnesses and the submissions now on record. I find that prosecution has made out a prima facie case warranting the 1<sup>st</sup> and 2<sup>nd</sup> accused to be

put on their defence in this trial within trial.

Orders accordingly.

**Ruling delivered, dated and signed at Nairobi this 15<sup>th</sup> day of September, 2016**

**R. LAGAT-KORIR**

**JUDGE**

In the presence of:-

.....: Court clerk

.....: 1<sup>st</sup> Accused

.....: 2<sup>nd</sup> accused

.....: For 1<sup>st</sup> accused

.....: For 2<sup>nd</sup> accused

.....: For State