



**IN THE COURT OF APPEAL**

**AT NAIROBI**

**( Coram: Law, Potter JJA & Simpson Ag JA )**

**CRIMINAL APPEAL NO. 115 OF 1981**

**BETWEEN**

**PAUL NAKWALE EKAI.....APPELLANT**

**AND**

**REPUBLIC.....RESPONDENT**

**JUDGMENT**

After a trial which lasted over three months at Nyeri the appellant, Paul Nakwale Ekai, was convicted of murder of Mrs Joy Adamson in the Shaba National Game Reserve on January 3, 1980. The learned trial judge held, in accordance with the medical evidence, that the appellant was between seventeen and twenty years of age. He could not exclude the possibility that the appellant may have been under eighteen years of age on January 3, 1980 and he accordingly sentenced the appellant to be detained during the pleasure of His Excellency the President. The appellant now appeals against his conviction.

Mrs Adamson, whose age was about seventy years, was a wellknown wildlife conservationist and writer of books and articles dealing with wildlife, and an artist of repute. She lived in a tented camp fenced with barbed wire and chain wire, to which we will refer to as 'Shaba Camp', or 'the camp', within the Shaba National Game Reserve. Also living in Shaba Camp on January 3, 1980, were a young man, Pieter Stephanus Mawson (PW 24) who was Mrs Adamson's assistant - and Dishon Kibocha (PW 25), the cook at Shaba Camp. A game scout who usually lived in Shaba Camp was away at the time. The nearest neighbour was Mr Roy Wallace (PW 15) who lived in another tented camp in the Shaba Game Reserve, about 22 km away. The nearest town, Isiolo, was 60 km away. The appellant had worked for Mrs Adamson from November 23, to December 7, 1979, as a casual labourer. He left on December 8, 1979 following a disagreement with Mrs Adamson over work. It is not clear if he was paid in full for the days worked. He was given a lift to Isiolo by Mawson.

On January 3, 1980, at about 6.40 pm, Mrs Adamson went for her usual evening walk. She was seen by Mawson to walk down the road away from the camp. Mrs Adamson usually returned in time to hear the 7 pm news on the wireless, but she had not returned at 7.15 pm, when it was getting dark and lamps had been ht in the camp Mawson and Kibocha became worried, and Mawson drove off in the camp's Toyota pick-up to look for her. Some 200 metres from the camp entrance, he saw Mrs Adamson's body lying on the road in a pool of blood. Mawson immediately tried to reverse the pick-up but got stuck on a rock by the side of the road. He ran back to the camp, called for Kibocha, and drove back with Kibocha to the scene in another camp vehicle, a Toyota station wagon. Mawson and Kibocha examined the body and satisfied themselves that Mrs Adamson was dead. Seeing a large wound on the left arm Mawson formed the opinion that Mrs Adamson had died as a result of being mauled by a lion, and told Kibocha this.

Leaving Kibocha with the body, Mawson drove back to the camp. He fetched a sheet and a blanket, and a rifle and ammunition. He noticed that the lights in the camp had gone out, but not surprisingly thought nothing of it at the time. Mawson returned to the scene in the station wagon. With Kibocha's help, the body was wrapped in the sheet and blanket and placed on the back seat of the station wagon. Mawson gave Kibocha the rifle and ammunition and told him to guard the camp. Kibocha hurried back to the camp and noticed that the lights had been extinguished. He noticed that the two gates of the animal enclosure at the back of the camp were open. He closed the first gate but was afraid to go further. Both gates had been bolted by Mrs Adamson before she went out. He also noticed that Mrs Adamson's tent appeared to have been opened, and that papers were scattered around. A trunk had been forced in the tent with an iron crowbar. In the meantime Mawson was driving towards Isiolo. On the way he stopped at Mr Wallace's tented camp for petrol. He told Mr Wallace that Mrs Adamson had been killed by a lion and that her body was in the station wagon. Mr Wallace saw the bundle on the back seat. Mawson then drove on to Isiolo, to the house of a Dr Wedel (PW 27), arriving there at about 8.30 or 9.00 pm. Mawson told Dr Wedel that Mrs Adamson had been killed by a lion. Dr Wedel advised Mawson to go straight to the police station, and accompanied him there. At the police station Dr Wedel examined the body and confirmed death. He saw two wounds on the left arm and one on the left side of the chest. Chief Inspector Gichunge (PW 26) arrived at about 9.30 pm. He saw the body and was told that Mrs Adamson had been killed by a lion. It was decided to take the body to the hospital mortuary at Meru where there was refrigeration. Gichunge accompanied Mawson to Meru, and the body was left at the mortuary there. Gichunge and Mawson returned to Isiolo, arriving after midnight. Mawson went to sleep at Dr Wedel's house.

Mrs Adamson's body was transported to Nairobi on January 4, and a post-mortem examination performed on January 5, by Dr Kaviti (PW 1) in the presence of Dr Timms (PW 2) and Dr Dockery (PW 3) who identified the body. Dr Kaviti, on external examination, saw two cut wounds on the left arm, 8 cm by 4 cm and 4 cm by 2 cm respectively. There was a 10 cm by 3 cm slashed wound on the left mid-axillary line of the chest between the sixth and seventh ribs. On internal examination it was found that this last wound penetrated 20 cm into the body, severing the abdominal aorta above the renal vessels. The injuries were caused by a sharp weapon such as a simi and the chest wound, which had gone through the rib-cage, had required great force to inflict. The cause of death was internal haemorrhage following severing of the abdominal aorta by a sharp pointed object.

On January 4, 1980, in the morning, Mawson and Chief Inspector Gichunge, who was not entirely satisfied that the deceased had been killed by a lion, went to Shaba Camp, where they were joined later by senior Superintendent Ng'ang'ira and other policemen. A blood patch indicated where Mrs Adamson's body had lain; near it was her walking stick. The stranded Toyota was towed back to the camp and examined. The battery was missing. One lead had been pulled off; the other had been cut through by some sharp instrument. A metal trunk in Mrs Adamson's tent had been forced open with a crow-bar which was lying next to the trunk but nothing had been stolen. On passing through the gates leading into and out of the animal enclosure at the back of the camp which Kibocha had found open, indicating that someone had passed through there when leaving the camp, the footprints of a person wearing shoes or boots were visible leaving the enclosure and going into the bush. On the following day the police party was re-inforced by the arrival of Superintendents Giltrap and Rowe from Nairobi. The area around Shaba Camp was searched but nothing significant was found, except a stick or rungu which was found in the bush off the road near where the body had lain. Fingerprints were looked for but nothing relevant seems to have been found.

Suspicion naturally fastened on all employees and former employees, especially those who had at some time or other quarrelled with Mrs Adamson, such as Mawson and the appellant. All were investigated, interrogated and in due course cleared of any complicity in the crime, except the Appellant, who on January 6, was seen by several witnesses to run away from a police party, with which was his brother Gabriel, which arrived at the manyatta where his father was living near Daba Borehole. There is evidence that the appellant had stayed there with his father in the latter part of December 1979.

The next that was heard of the appellant was when, on February 2, 1980, he and two other men reported to the police post at Baragoi that they had been attacked by bandits at a place some 15 km from Baragoi, which itself is, according to the evidence, 300 miles from Isiolo. It does not seem to be more than 200

miles, according to the map, and the reference to 300 miles on record may have been a mistake for 300 km. One of these men gave his name as Paul Nakwale Ekai, and produced an identity card in that name. It was the appellant. Sergeant Gatunde (PW 30) who was at Baragoi Police Post at that time remembered that a man of that name was wanted by the police at Isiolo. He accordingly detained the appellant and informed Isiolo. Inspector Njeru went to Baragoi, and on the following day brought the appellant to Isiolo, arriving at about 4 or 5 pm. Senior Superintendent Ng'ang'ira deposed that the appellant was brought to him at his office at about 5.30 pm, and he interviewed the appellant for about ten minutes. The appellant said he knew nothing about the murder of Mrs Adamson, and said that he was tired and wanted to rest. Inspector Njeru took the appellant to the charge office and deposed that he booked him in, but according to the occurrence book the appellant was not booked in until 9.05 pm. Mr Ng'ang'ira deposed that he made a routine inspection of the charge office at about 9 pm and saw the appellant there, asleep, covered in a blanket. The appellant has made no complaint of illtreatment at Isiolo prior to that time. The next entry relating to the appellant in the occurrence book is that he was booked out at 7.20 am when, according to Inspector Njeru, he escorted the appellant to Mr Ng'ang'ira's office where, according to Mr Ng'ang'ira, the appellant made the inquiry statement under caution which amounts to a full confession to the murder of Mrs Adamson. The appellant's account of the events of the night of February 3/4 is very different. He deposed, in the course of a trial within a trial and in his evidence, that at about 9 pm on the night of 3 February, not having eaten all day, he was taken to a place about two miles outside Isiolo called Kampi ya Garba by Mr Ng'ang'ira, Inspector Njeru, and Corporals Njue and Mukwana. Cpl Njue lit a fire. The appellant's handcuffs were removed and he was told to undress. He was told to agree that he had killed 'that old woman'. He refused to agree. Njeru beat him with a whip made from a rubber tyre. Mukwana and Njue whipped him with whips made of hide. Ng'ang'ira kicked him with booted feet, in the stomach and on the head. Ng'ang'ira then took an iron rod which had been heated in the fire, and applied it to his body, leaving scars on his arms, legs and thighs which he displayed at the trial in July 1981. The beatings went on until he lost consciousness, and he did not come to his senses again until about 4 am when he found himself in Mr Ng'ang'ira's office. Some sheets of paper with writing on them in ink were produced, and he was forced to sign in various places. All four police officers named by the appellant gave evidence denying that anything of the sort happened. We will return to this aspect of the case later in this judgment.

The next thing that happened on February 4 was that Mr Ng'ang'ira went to Shaba Camp with the appellant, accompanied by Cpl Njue and two constables. There, after being again cautioned, the appellant pointed out various places mentioned by him in the inquiry statement. In particular he showed Mr Ng'ang'ira where, he said, he had thrown his knife in the swamp. Three policemen took off their boots and searched for the knife in the swamp, for about half an hour but without success. While this search was going on the appellant, escorted by Constable Musasia (PW 37) led Mr Ng'ang'ira and Mr Mawson in the direction of Daba, along a game track, for about two miles to a place where, according to these witnesses, he pointed to a battery hidden under a bush. This battery was later positively identified by the supplier Mr Wafula (PW 22) and by Mawson as being the battery stolen from the Toyota pickup on the night Mrs Adamson was killed. The party returned to Shaba Camp to be told that no knife had been found in the swamp. The appellant then led a police party, including Mr Ng'ang'ira, in a Land Rover to a manyatta near Daba Borehole and there pointed to a knife, scabbard and belt, which were taken by Mr Ng'ang'ira. They then returned to Shaba Camp, where they found Superintendents Giltrap and Rowe. They all returned to Isiolo in convoy.

That morning, after recording the inquiry statement, Mr Ng'ang'ira had arranged with the police commander at Meru to send an Inspector to Isiolo to record a charge and caution' statement from the appellant. Inspector Maina (PW 44) arrived from Meru during the afternoon, and the next day recorded a statement in Kiswahili from the appellant after first charging him with the murder of Mrs Adamson. This was at 10.05 am on the morning of February 5. The statement begins with the words: "Mimi ndio nilimua (It is I who killed her)" and follows much the same lines as the inquiry statement recorded by Mr Ng'ang'ira on the previous day. It is a full confession to the murder of Mrs Adamson and includes an admission that after the murder he made an attempt to steal from a locked trunk in Mrs Adamson's tent but was interrupted by the return of Mawson. Inspector Maina then translated the statement into English, and appended a certificate also in English, in the following terms:

“I certify that the above statement was given by me voluntarily, without any inducement or threats. It is a true record of my reply to the charge.”

The appellants signed the charge and caution which preceded his statement, signed the Kiswahili version of his statement on each page and at the end. He did not however sign the certificate at the end of the English version. This, according to Mr Maina, was due to an oversight on his part and not to any refusal on the part of the appellant.

The appellant deposed that he merely signed, at all the places indicated by Inspector Maina, a previously prepared statement, because he was hit on the mouth by Inspector and tortured by Cpl Njue who tied string round his testicles and pulled, causing great pain. It would thus seem that the appellant's failure to sign the certificate was not due to any refusal on his part.

After the 'charge and caution' statement was recorded, the Appellant went with Mr Ng'ang'ira and Mr Giltrap in a Land Rover to a manyatta near Kampi ya Garba and led them to a house which he said belonged to his sister. From that house the Appellant produced a haversack containing articles of clothing including a dressing-gown with Mawson's name in it, a pair of shoes and a sheet; the dressing gown, shoes and sheet being later identified by Mawson and Kibocha as Mawson's property, stolen from Shaba Camp on the night of December 10-11. That haversack was subsequently examined by a government chemist and found to bear bloodstains of group AB and PGMI which was Mrs Adamson's blood group, whereas the appellant's group is A. From the roof of another house he produced a torch which was identified as one stolen from Mrs Adamson's tent on the same night.

Then the appellant was taken to be medically examined at Isiolo District Hospital. Dr Mwaniki (PW 13) did the examination. He deposed that the appellant took off all his clothes and had no injuries on him, and that the appellant in answer to questions said he had not suffered any injury and had no complaints. He had old scars on his chest and abdomen which the doctor described as 'traditional beauty marks and therapeutic or treatment marks'. Mr Giltrap also deposed that he was present when the appellant removed his clothes and saw that he was uninjured. Dr Mwaniki had deposed that Mr Giltrap was present earlier but left before the actual physical examination. We think the doctor was mistaken, as the appellant himself deposed that Mr Giltrap was present throughout the examination. On June 26, 1980, the appellant was examined by Dr Ngatia at Nyeri where the preliminary inquiry was being conducted. Superintendent Giltrap was again also present. Dr Ngatia saw, as did Mr Giltrap, scars on the appellant's body. Dr Ngatia's opinion is that those scars were not caused by native medical treatment, nor were they tribal marks, but were twelve to twenty weeks old and were due to the body being hit with a whip or cane, more probably a cane. The appellant's testicles were swollen and tender, and the left lower incisor tooth was missing and the gum raw and tender as if the tooth had been recently extracted. Dr Ngatia's examination was conducted almost exactly twenty weeks after Dr Mwaniki's examination held on February 5.

At the trial, the two statements allegedly made by the appellant were admitted in evidence as having been voluntarily made, after two separate trials within a trial. The appellant gave evidence on oath, repeating his allegations of torture and denying being responsible for Mrs Adamson's death. He said he ran away on seeing the police on January 6, because he had fought with his brother Gabriel on January 5 and Gabriel had threatened to report him to the police. He claimed that on January 3, 1980, he was at his aunt Rebecca's house at Kula Mawe near Isiolo, that he went to Isiolo in the morning returning at 11 am and that he did not leave Rebecca's house again until the following day. He called Rebecca as a witness. She deposed that the appellant stayed with her and slept at her house at Kula Mawe from January 1 to 6, and that on January 3, he was suffering from malaria and did not leave the house at all.

The learned judge also found that the appellant's two statements were substantially true, being corroborated in many particulars. He rejected the appellant's alibi as a fabrication, and convicted the appellant.

The appellant was represented on this appeal by Mr Imanyara and Mr Kiome, and the Republic by Mr Gicheru, and we are indebted to these learned advocates for their able representation of the respective cases.

Mr Imanyara began submitting that no murder weapon had been produced. The prosecution, in opening the case, had apparently relied in this respect on the simi allegedly pointed out to Mr Ng'ang'ira by the appellant at the manyatta near Daba Borehole on 6 February, but this simi was not shown to have been the appellant's property nor was it proved to have been the murder weapon. Mr Imanyara submitted that in these circumstances the possibility had not been excluded that Mrs Adamson had in fact been killed by a lion or other wild animal such as a buffalo. We do not think there is merit in this ground of appeal. The post-mortem examination of Mrs Adamson's body, coupled with the evidence of a wildlife expert of many years' experience, Mr Jenkins (PW 2), established beyond all reasonable doubt that the fatal injury had been caused by a sharp bladed weapon, such as a simi, penetrating to a depth of 20 cm, and could not have been caused by a wild animal.

The main grounds of appeal were directed against the admission in evidence of the statements allegedly made by the appellant to Mr Ng'ang'ira and Inspector Maina. Mr Gicheru for the Republic conceded that if these statements are held to be inadmissible, the remaining circumstantial evidence against the appellant would be insufficient by itself to support the conviction for murder. Mr Imanyara submitted that these statements were neither voluntary nor true. As regards voluntariness, Mr Imanyara stressed that when first seen by Mr Ng'ang'ira on the evening of February 3, 1980 the appellant had said he knew nothing about Mrs Adamson's death, and he submitted that it was most unlikely that on the following morning he should make a full confession to Mr Ng'ang'ira, unless he had been subjected to violence and forced to make a statement or sign a previously prepared document. In cross-examination, Mr Ng'ang'ira said he was not surprised when the appellant elected to make a statement. He had interrogated the appellant briefly the previous evening. It may well happen that an accused person, who has originally denied all knowledge of a crime, later admits having committed it. Such a state of affairs is within our experience. An accused person may well form the impression, from questions put to him in interrogation, that proof of his guilt exists, and decide of his own free will to confess. As regards the allegations of torture on the night of February 3/4, Mr Imanyara submitted that although the appellant may have exaggerated what happened, the fact that he was subjected to violence was corroborated by the evidence of Dr Ngatia. The learned judge was not impressed by this is no explanation forthcoming from the prosecution for the missing tooth but the appellant has never claimed that the police knocked out one of his teeth. As regards the swollen testicles, it is unfortunate that Dr Mwaniki was never shown Dr Ngatia's report and asked to comment on it, particularly as to whether pressure on testicles would cause swelling and tenderness apparent twenty weeks later. In any event Dr Ngatia did not exclude the possibility of the condition he saw being due to some form of venereal disease. As regards the scars which were seen both by Dr Ngatia and Supt Giltrap, which the appellant said had been caused by a hot iron, Dr Ngatia thought they were due to caning. In fact, he did not mention the possibility of burns being responsible for these scars, until right at the end of his evidence, when in answer to a question by the learned judge, he said that the type of scars he saw might have been caused by a not very hot iron rod. Against this evidence there is the evidence of Dr Mwaniki, who examined the appellant a short time after he was allegedly tortured, whipped and burnt, and who saw no injuries on his body but did see scars consistent with native therapy or beauty marks. The appellant made no complaint to him of ill-treatment. Mr Giltrap who was present saw no recent injuries. Mawson, who saw the appellant at Isiolo on the morning of February 4, said: 'Ekai looked perfectly normal to me'.

Mawson saw the appellant again in the afternoon at Shaba Camp, and said that on this occasion 'he appeared to me 100% normal'. It is also a fact that the Appellant, on February 4 and 5, in the course of two visits to Shaba Camp and other places, was able to travel over long distances both in vehicles and on foot, without apparent difficulty. There is also the fact that the occurrence book, which appears to have been properly and chronologically kept up, indicates that the appellant did not leave Isiolo police station on the night of February 3/4. The allegations of ill-treatment in this case have caused us much concern, but on our own assessment of the evidence, we are left with no reasonable doubt that the appellant was not tortured or ill-treated, as he claims to have been, and that both his inquiry statement to Mr Ng'ang'ira and his 'charge and caution' statement were made voluntarily. We agree with the learned judge's findings to this effect, and we have in mind the following extract from the judgment of the Court of Appeal in England in *Republic v Rennie* [1982] 1 All ER 385 that:

"The person best able to get the flavour and effect of the circumstances in which the confession was made

was the trial judge, and his findings of fact and reasoning were entitled to respect.”

Mr Imanyara then went on to submit that both statements were manifestly untrue in several respects, so that even if made voluntarily, they could not be relied upon and should have been rejected, and he cited *Aneriko v Uganda* [1972] RA 193 in support of this submission. In *Aneriko*'s case the appellants had made 'charge and caution' statements to the effect that the deceased had died as a result of having his throat cut and being repeatedly stabbed all over his body, and that he had bled profusely. In fact the deceased had died of asphyxia due to the neck being squeezed or pressed by hands. The medical evidence contained no mention of cut or stab wounds. This court's predecessor held as follows:

“Again, a substantially truthful confession may contain mistakes ... In an appropriate case, a trial judge may rely on such a confession, notwithstanding the mistakes it contains. If, however, a material element in a confession, and one which must have been within the knowledge of the person making the confession is demonstrably untrue, the value of the confession as a whole is destroyed and it cannot be relied on.”

Mr Imanyara submitted that both the appellant's statements contained demonstrably untrue elements, which must have been untrue to the appellant's knowledge, and he submitted that this supported the appellant's claim that he had merely signed previously prepared statements in the places indicated to him. These untrue elements were, according to Mr Imanyara, that in both statements the appellant is recorded as saying that Mrs Adamson had not paid him for fourteen days' work, and that was why he decided to beat her or kill her, whereas he had in fact been paid. Again, in both statements the appellant said that he had thrown the murder weapon into the swamp, but no knife was found at the place indicated by him. So far as the non-payment of wages is concerned, we doubt whether a mis-statement as to motive is a material element in a confession. In any event, it is not clear from the evidence on record whether the appellant was paid in full, as he claims. He signed for his December pay in the wagebook, but not for his November pay. He deposed that his November pay was given to him at Isiolo by Mawson at the end of November, but Mawson said he did not know whether or not the appellant had been paid. As regards the knife, the fact that no knife was found at the place indicated by the appellant does not mean that he lied when he said he threw it there, more than a month before the search. A knife which has been thrown into a swamp may well sink into the mud and be difficult to find a month later. We do not think that these untruths, if untruths they were, are material elements in the appellant's two confessions such as to necessitate their rejection. Mr Imanyara also pointed out that nearly all the facts contained in the inquiry statement were known to Mr Ng'ang'ira, who could therefore - although he denied it - have prepared the statement in advance; for instance that Mrs Adamson was stabbed three times, and forced the appellant to sign it. That is true. It was suggested also that Inspector Maina was fully briefed and given a copy of the inquiry statement before he took the 'charge and caution' statement. This was denied by Inspector Maina and by those officers at Isiolo who would be in a position to brief him. The learned judge believed these police officers, and we see no reason to do otherwise. One indication at least that the inquiry statement was not prepared in advance is this statement in it, attributed to the appellant, that: “After I removed the said battery I hid it under a tree where I am ready to show.”

Mr Ng'ang'ira could not have known, on the morning of February 4, that the appellant could show him where the battery was hidden. The appellant denied that he had led the police party and Mawson to the battery. He said he was taken to the place where it was hidden. This was two miles from the camp, on a path leading to Daba, and although the police spent two days searching the area immediately after the murder the finding of the battery (well hidden as it was) was extremely unlikely. The judge rejected the appellant's evidence on this point and accepted that of Mr Ng'ang'ira, Mawson and the police constables escorting the appellant, and we have come to the same conclusion.

Mr Imanyara also submitted that the 'charge and caution' statement recorded by Inspector Maina should be rejected as inadmissible because it was in breach of the Judge's Rules in that the appellant had not signed the certificate of voluntariness at the end. The Judges' Rules applicable to Kenya are the pre-1964 Rules (see *Anyangu v Republic* [1968] EA 239). Those Rules do not require a certificate of voluntariness. Inspector Maina deposed that police standing orders do require the addition of such certificate at the end of every extra-judicial statement, and that the maker of the statement be required to sign it. The Judge's Rules, as was made clear in *Anyangu*'s case, are only rules of practice, and it is always in the discretion of

the trial judge to admit in evidence statements made by accused persons although they are not obtained strictly in accordance with the rules, provided of course (as was the case here) that the judge is satisfied that the statements were made voluntarily and were substantially true. In this case the appellant did not refuse to sign the certificate; by an oversight he was not asked to sign it. This omission does not affect the admissibility of the impugned statement.

Finally, we would comment on one aspect of the case which we consider significant. On the night of December 10/11, 1979, there was a robbery at Shaba Camp in the course of which property belonging to both Mawson and Mrs Adamson was stolen. This property was found in the appellant's possession, or under his control, on February 5, 1980. This raises a strong presumption that the appellant was the robber. In the same robbery a tin trunk in Mrs Adamson's tent which contained her cash-box (one of three trunks in the tent) was forced open with a crowbar taken from the camp workshop. There was another robbery, or attempted robbery, on the night of Mrs Adamson's murder, when the same tin trunk was again forced open by a person using precisely the same system as in the earlier robbery, that is to say a crowbar taken from the camp workshop. In each case there were indications that the intruder went out through the animal enclosure. The inference that the same person, that is to say the appellant, was concerned in both robberies is in our view well-nigh irresistible, and provides another reason for rejecting the appellant's defence that he spent the night of the murder at his aunt's house at Kula Mawe, 60 km from the scene of the crime. It also leaves us with no reasonable doubt that the appellant was at or near Shaba Camp at the time Mrs Adamson was killed.

Accusations of ill-treatment are often against the police officers, sometimes with justification. In fairness both to the police and to accused persons we would like to suggest that consideration be given to amending the Evidence Act to provide that no statement in the nature of a confession made to a police officer of whatever rank be admissible in evidence against a person accused of a criminal offence. Such statements should only be admissible if made to a magistrate, no policeman being present, and a carefully prescribed procedure should be followed by the magistrate including giving formal charge and caution, followed by questions as to whether the accused person has any complaints relating to his treatment or is suffering from any injuries, and if apparent a note should be made of such injuries, and of any complaint which may be made. Furthermore, we consider that when a suspect or accused person is taken before a medical officer to be examined, the examination should take place in the absence of any police officer. We deprecate the presence of police officers, especially senior police officers, at such medical examinations. In this case, however, after carefully considering all the arguments and submissions on both sides, and on our own evaluation of the evidence adduced at the trial, we are left with no reasonable doubt that the appellant was properly convicted and we order that his appeal be dismissed.

**Dated and Delivered at Nairobi this 17th day of November 1981.**

**E.J.E.LAW**

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**JUDGE OF APPEAL**

**K.D.POTTER**

.....

**JUDGE OF APPEAL**

**A.H.SIMPSON**

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**AG.JUDGE OF APPEAL**

I certify that this is a true copy of the  
original.

**DEPUTY REGISTRAR**