



**Republic v Adede (Criminal Case E026 of 2024)
[2026] KEHC 1415 (KLR) (13 February 2026) (Ruling)**

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**REPUBLIC OF KENYA
IN THE HIGH COURT AT SIAYA
CRIMINAL CASE E026 OF 2024
DK KEMEL, J
FEBRUARY 13, 2026**

BETWEEN

REPUBLIC PROSECUTION

AND

GEORGE OCHIENG ADEDE ACCUSED

RULING

1. The accused herein George Otieno Adede has been charged with an offence of murder contrary to Section 203 as read with Section 204 of the Penal Code. The particulars are that on 7th day of May 2024, at Nyangoma Division, Bondo Sub County within Siaya County, murdered one Sween Awino.
2. The accused pleaded not guilty and the case has since commenced in earnest for hearing and that the same has substantially proceeded whereby the prosecution have so far called eleven (11) witnesses in support of its case. One of the witnesses (PW8) had earlier presented his testimony and was later recalled for the purposes of producing a confession statement that had been made by the accused. It was at this point that the defence raised an objection over the prosecution’s attempt to have the said document admitted in evidence on the grounds that the same was obtained contrary to the provisions of the Out of Court Confession Rules 2009 and Section 25A of the Evidence Act. This court thereafter directed that a trial within a trial do commence and made the following observations:

“I have noted the sentiments of the learned counsels. The prosecution’s witness (PW8) intends to produce a confession statement allegedly made by the accused herein. The defence counsel has objected to the production on ground that the same is in violation of the out of court confession rules 2009 and Section 25A of the Evidence Act. As there is an objection to the production of the document, it is appropriate to grant the defence an opportunity to cross examine the witnesses via a trial within a trial so as to establish whether or not the confession statement was lawfully obtained. Consequently, I direct that a trial within a trial should commence forthwith. The same shall begin with the testimony of the



accused and thereafter followed by the officer who recorded the confession statement now being disputed. Both sides will have the opportunity to cross examine and re-examine their witnesses. Thereafter, the court will proceed to determine whether or not the confession statement will be admitted in evidence.”

3. The accused herein George Ochieng Adede was sworn and allowed to testify which is as follows:

“I am the accused herein and have been following the evidence. I am aware that the prosecution seeks to produce a confession statement. It is true I was called by the OCS Chief Inspector Kahindi and was removed from the cells. I did not inform the investigating officer that I wanted to make a confession. I have seen the confession statement and vide paragraph 5 thereof, I have indicated that there were no threats etc. The last paragraph of the document indicated that I was being pressured. My life was under threat at the time. I was under duress. The OCS took me to his office for questioning. The confession is alleged to have taken one hour thirty minutes. It is not true that I was given fifteen minutes break. I raised a medical complaint but I was not taken to hospital yet I had an underlying medical condition. The proforma document has disclosed my medical condition yet I did not give consent. The document must have been disclosed to several people. I am not aware of regulations regarding disclosure of one’s medical condition. I was not informed of the need for legal representation but I requested for the same only for the OCS to say that the presence of my wife was sufficient. My wife is Faith Awino Sakwa. The nature of the offence and section of the law or circumstances are not indicated on the form. There was no confession in the matter.”

4. On cross examination by Muntui, the accused stated as follows:

“Yes, my name is George Ochieng Adede and the ID card Number is 23709286. Yes, I filled part of the proforma from such as paragraphs 5,6 and 9. Yes, my signatures are on the form. I had been tortured the previous night when I was transferred from Bondo Police Station to Lwanda Kotieno Police station where a polythene bag was placed on my head while my hands were tied from behind and then pierced with a needle on my fingers. Yes, I was injured but not taken to hospital. Yes, I had been threatened with more harm if I did not record the confession the following day. Yes, the signatures on the form are mine. Yes, I was in a position to understand all what was stated. I was not allowed to read the statement. Yes, I had already taken a plea of not guilty in Bondo Law Courts and this was before the confession was made. Yes, I was under treatment for the condition I was in. Yes, I had no appointment over my medical condition. My concern is about the injuries and torture inflicted on me. I do not have any other evidence apart from what I have stated.”

5. On re-examination by Ochanyo, the accused stated as follows:

“I was afraid and being pressured. I was seeking for treatment for torture and injuries sustained. The prosecution has brought the form but left out treatment documents. I had no choice but to sign to avoid further torture. ”

6. The prosecution witness No. 234529 CIP Kahindi Charo (PW8) stated in his evidence in chief as follows:

“I am currently the OCS Bondo Police Station. I still had the same rank in 2024 when I recorded the confession statement. The accused was in custody. I am conversant with the



Out of Court Confession Rules 2009. I informed the accused of his rights such as right to legal representation, right to maintain silence. The accused led police to the recovery of the body of the deceased and other items. He approached the investigating officer to make a confession and who led him to me as I was of the rank of Chief Inspector. The accused is a teacher by profession and understood the process. He is the one who proposed a representative namely Faith Awino. We had no reason at all to threaten accused as all items had been recovered and that it was his own volition. He was never threatened or induced as alleged. The accused had already absorbed the matter and was calm when he made the confession. He was in good medical condition and was quite calm, and coherent. There was no assault or torture as alleged. The accused read the statement twice before signing it. The confession took one hour thirty minutes and that he was given 15 minutes break. He documented the whole story. The confession was written by myself as the accused dictated and that he later read it twice and signed twice per page. The signatures are his. I also counter signed the signatures. Accused did not raise any issues of threats or inducement. He made the confession willingly. I admit there was an oversight as I did not indicate the nature of the case and legal provision.”

7. On cross examined by Ochanyo, he stated as follows:

“Yes, I didn’t indicate the offence and circumstances. Yes, the document contains status of accused as he pointed it to me. Yes, I have been a Chief Inspector of Police for six years. Yes, accused indicated “yes” on the part regarding medical condition but I did not ask him if he wanted to. The accused was first placed in custody at Lwanda Kotieno Police Station and later Bondo Police Station. I would not know if torture took place at Lwanda Kotieno. Yes, OB is not indicated on the confession statement. Yes, I directed that the accused be taken to hospital but there is no evidence to that effect. I cannot recall if the representative was wife to the accused. There is no requirement to indicate the relationship of the representative to the accused. Yes, accused brought the representative as he was able to communicate to her. Yes, I do not know how the accused communicated with the representative.”

8. On re-examination by Muntui, he stated as follows:

“The accused was arrested on 7/5/2024 and the confession is dated 9/5/2024. Upon arrest, the accused was taken to Lwanda Kotieno Police Station and later brought to Bondo. The OB is documented at Lwanda Kotieno Police Station.”

9. It was submitted by Mr. Ochanyo for the accused as follows:

“It is apparent and clear that the accused was at Lwanda Kotieno Police Station and only brought in for the confession in Bondo. How could the accused be brought in to Bondo and able to acquire a telephone and contact his representative at the same day? What was the hurry? Does it not back the accused’s claim that he had been tortured and threatened at Lwanda Kotieno Police Station? The reason for the absence of the OB on the document that it was a Lwanda Kotieno Police Station is not convincing yet the Bondo OCS could get the details from the station which was under him. The OCS has been a Chief Inspector for six years and was expected to monitor the conduct of his subordinates. He overlooked the portion regarding the offence and circumstances. This shows that the exercise was done in a hurry. Whose testimony is believable in the circumstances between the accused and the recording officer?”



10. Mr. Muntui for the prosecution submitted as follows:

“We have presented credible evidence that the confession was properly obtained from the accused. There were no threats or torture or assault. The accused’s claims have not been backed by any documents. He duly admitted signing the document. The document should be admitted in evidence.”

11. I have considered the evidence tendered in the trial within a trial as well as the submissions presented. The issue for determination is whether the confession statement sought to be produced by the prosecution’s witness (PW8) was obtained in accordance with the provisions of the [Out of Court Confession Rules 2009](#) and Section 25A of the [Evidence Act](#) and whether it is admissible in evidence.

12. It was the contention of the defence that the confession in question was not voluntarily given. On the other hand, the prosecution maintains that the same was voluntary and in accordance with the Judge’s Rules and [Evidence \(Out of Court Confessions\) Rules 2009](#).

13. It is noted that the accused herein was arraigned in court on 25/5/2024 where he returned a plea of not guilty and that throughout the period, the accused never raised any complaint whatsoever, either directly or through his learned counsel regarding any issues to do with torture, threats/inducements or intimidation of any kind. It is now a whole two years. There is no evidence that he ever lodged any complaint with the court or the Independent Police Oversight Authority (IPOA). The accused has alleged that before recording the confession, he was tortured while at Lwanda Kotieno Police Station before being presented at Bondo Police Station to meet the OCS (PW8). He further claims that his hands were tied behind his back and hence the question that arises how was he able to write or record the statement while his hands were tied and finger nails pricked? Again, the accused has been attending court and has never requested the court to order him to be taken to hospital for any injuries or illnesses to be taken care of. The accused was bound to prove the allegations to some standard degree of proof. Indeed, no documents were presented by the accused to show that he suffered any injuries as alleged. The accused on cross-examination, confirms that the statement was recorded by him in a language that he understood. He also confirms that he is a teacher by profession, and therefore it is clear that he understood the English language which was used during the recording exercise. There is also no evidence that while in prison custody, the accused has ever requested the prison authorities to take him to hospital for medication. A careful perusal of the proforma confession statement does not show that the accused raised any complaint about having been tortured at Lwanda Kotieno Police station before being moved to Bondo Police Station where he met the OCS who incidentally is the recording officer. The lengthy proforma confession document was duly filled by the recording officer and that the information filled therein was given by the accused.

14. Admissibility of a confession made out of court to a police officer is governed by section 25A (1) of the [Evidence Act](#) which provides as follows:

“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 inspector of police, and a third party of the person’s choice.”



From the foregoing provision, it is clear that a confession made before a qualified police officer may only be rendered inadmissible if under section 26 of the Evidence Act it is caused as follows:

“26. Confessions and admissions caused by inducement, threat or promise. A confession or any admission of a fact tending to the proof of guilt made by an accused person is not admissible in a criminal proceeding if the making of the confession or admission appears to the court to have been caused by any inducement, threat or promise having reference to the charge against the accused person proceeding from a person in authority and sufficient in the opinion of the court, to give the accused person grounds, which would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him.”

It transpired from the evidence in the trial within a trial that the accused called his wife one Faith Awino to be present during the recording of the confession who acted as the third party required for purposes of recording a confession and this therefore leaves no doubt that the exercise was freely conducted and that the accused voluntarily recorded the confession. It is instructive that the accused did not see it fit to call his wife to come and give evidence so as to back his claim that the confession was not voluntarily. Again, it transpired from the evidence that the accused had earlier on led police officers to his compound where the body of the deceased as well as the murder weapons were recovered. The accused is silent about that fact as he has not raised any complaint to the effect that he was tortured before he led police officers to his compound where the body of the deceased was recovered. One can therefore surmise that the accused had voluntarily led police to his compound and later recorded the confession. I find the presence of the accused's wife during the confession recording left no doubt that the exercise was conducted in compliance of the Out of court confession Rules 2009 and section 25A of the Evidence Act. I am satisfied that the confession recording was conducted above board and that the present objection by the accused is an afterthought and meant to cast aspersions on an exercise that was properly carried out with his participation and acquiescence.

15. An analysis of the evidence of Chief Inspector of Police Kahindi Charo and the accused in the trial within a trial as well the proforma confession statement as well as the submissions leads me to come to the conclusion that the confession in question was given voluntarily and therefore admissible in evidence. Consequently, the objection raised by the defence regarding the admission of the confession is found to lack merit and is declined. The witness (PW8) is directed to proceed with his evidence and produce the said confession statement I evidence.

DATED AND DELIVERED AT SIAYA THIS 13TH DAY OF FEBRUARY 2026.

D. KEMEI

JUDGE

In the presence of:

George Ochieng Adede.....Accused

Ochanyo.....for Accused.



Soita.....for Prosecution.

Maurine/Kimaiyo.....Court Assistant

