

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KIAMBU

CRIMINAL CASE (MURDER) NO. E024 OF 2020

REPUBLIC.....PROSECUT

OR

VERSUS

STEPHEN GIKUHI

MWIRIGI.....RESPONDENT

R U L I N G

A. Introduction

- 1.** This ruling related to admissibility of the confession statement made by the accused person before Chief Inspector Hellon Ndoria (PW5) on 26.06.2020 and whether the same was admissible in evidence. The background to this matter is that the accused person herein was charged with the offence of Murder contrary to provisions of ***Section 203 as read with the provisions of Section 204 of the Penal code***. The particulars were that on the night of 14th day of June 2020 at around 2300hrs at

corner one kiganjo, Thika Sub County within Kiambu county he murdered one **BATIKA NJERI MUTHONI**.

2. PW5 did testify that on 26.06.2020 she was the traffic base commander stationed at Thika Sub County and on the date while at the office, one DCI officer Mr Thupi requested her to take a confession statement/ statement under inquiry from the accused person. The accused was brought before her and she did inform him of his right to have a witness present during the said process. The accused called his niece, one Mary Wanjiku, who later came to her office, and she also briefed her on the process she was to undertake. She too confirmed that she was comfortable being the accused witness and before she started to record the said statement under inquiry allowed the accused to eat the food, which had been brought to him by his niece.
3. It was PW5 further evidence that after the accused had finished eating, she once again explained to him that he was facing a murder charge and informed him of his rights under the law, including the right to have his advocate present, but the

accused restated that he was comfortable with his niece being present and she would also be his interpreter . She also cautioned him that the evidence take could be used against him in a court of law and he categorically stated that he was comfortable with the whole process.

4. She then proceeded to record the accused statement under inquiry, where he confessed that the deceased had been his wife for 4 - 5 years and that they were blessed with one child. On the material night he had called his wife for a discussion since he had discovered that she had been unfaithful and this had led to a fight resulting in him hitting her on the neck and then he took a bed sheet and used it to strangle the deceased. He then slept with their child in the sitting room and at 5.00am, when he woke up went to check on the deceased in the bedroom and found that she had died. In shock, he took off, left the child with his niece, Mary Wanjiku and took a bus to Garissa, where he surrendered at Madowo Police station.
5. PW5 confirmed that after preparing the voluntary statement she prepared the relevant certificates of translation and recording, which were signed by

the accused and his witness and produced them before court as exhibits. The accused counsel did raise an objection to their production on the basis that the said process did not comply with provisions of **Section 25(A) of the Evidence Act**. The alleged translator was not qualified or licensed to act as an interpreter and that the accused was not represented by counsel during the said process, which then rendered the process to be nullity. On the other hand the prosecution insisted that the process undertaken fully complied with the provisions of **Section 25A of the Evidence Act** and that both the accused and his witness signed the voluntary statement in acknowledgment that they were satisfied with the entire process. They thus urged the court to dismiss the objection and allow the said documents to be produced as exhibits in support of the prosecution case.

C. DETERMINATION

- 6.** I have considered the objection raised by the accused counsel as well as the response by the state counsel. **Section 25A of the Evidence Act, Cap 80** 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. 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](#)**.

- 7. Section 25A of the [Evidence Act](#)** is to be read together with section 26, of the same Act, 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.

8. The accused confession was made before Chief Inspector Ndoria PW5), who was not the investigating officer and in the presence of Mary Wanjiku, the accused niece, who as per the said provision of law, is “ **a third party of the person’s choice**”. It was thus not a must for the accused to have his advocate present during the said process. Finally, on the ground raised touching on the issue of translation and/or interpretation, the law also does not require one to have specific qualification for him/her an interpreter and given that both the accused and his niece signed the certificate of translation and recording, it signified that they were satisfied with the entire process.

9. The objection raised is thus overruled and the statement recorded under inquiry (MFI-P2), Certificate of translation, recording signed by the accused person and his witness (MFI 3, 4, and 5) are thus all admitted into evidence as Exhibit P2, P3, P4 & P5.

10. It is so ordered.

**DATED, DELIVERED AND SIGNED AT KIAMBU THIS
11th DAY OF FEBRUARY 2026.**

**FRANCIS RAYOLA OLEL
JUDGE**

Delivered on the virtual platform, Team this **11th** day of
FEBRUARY ,2026.

In the presence of: -

.....Accused
.....Prosecution
.....Court
Assistant