



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KAKAMEGA
CRIMINAL CASE NO. E038 OF 2023

REPUBLIC

PROSECUTOR

VERSUS

COLLINS VITINYU SHITULE

ACCUSED

RULING

1. Having listened to the submissions by both Counsel, it is clear that the Investigating Officer (I.O) obtained evidence amounting to an admission of guilt from the Accused.
2. At that point, by virtue of Section 25(A) of the Evidence Act and the Evidence (Out-of-Court Confession Rules), the I.O should have discontinued the interrogation and handed over the Accused to an Inspector or other authorized person to take his confession.
3. In the **Ahamad Abolfathi** case, the Supreme Court clearly stated that an admission is a statement, oral or documentary which suggests any inference as to a fact in issue and which is made by any person in the case, whereas a confession is an

express admission of guilt. Where the elements in a suspect's statement tend to point out to an express admission of guilt rather than self-incrimination, it would be prejudicial to the Accused and a violation of his right to a fair trial, for such statement to be admitted as evidence.

4. In the premises, the objection is upheld and the statement where the Accused is said to have stated that he and his friends beat up and burnt the deceased is expunged from the record.

Dated, signed, and delivered at Kakamega, this 16th day of March 2026.

**A. C. BETT
JUDGE**

In the presence of:

Ms. Chala for the Prosecution

Mr. Ongoya S.C. for the Accused

Court Assistant: Polycap