



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

CRIMINAL CASE NO. 31 OF 2019

REPUBLIC/STATE

.....**PROSECUTOR**

VERSUS

LUCIA MUENI KIIO.....1ST
ACCUSED

NTHOKI KITUSA *alias* TERESIA NTHOKI KITUSA
***alias* MAMA PESA2ND**
ACCUSED

SAMUEL MULI NTHENGWA3RD
ACCUSED

CRYPUS MUTUA KIIO4TH
ACCUSED

RULING

1. This is a ruling in the Trial within Trial conducted to determine the admissibility of a confession which is alleged to have been made in connection to this case by Nthoki Kitusa, the 2nd accused on 9th September, 2019.

2. According to the State, on the said date the 2nd accused voluntarily intimated to the Investigating Officer IP. Samuel Harry Kamau (PW1), that she was willing to disclose what had transpired in connection to the offence for which she had been arrested. She, together with her co-accused, had been arrested on 5th September 2019 in connection to the death of Cosmas Kiio Munguti. PW1 told this court that the accused intimated to him that she was not willing to “*beba mzigo ya hawa watu*” which loosely translated means that she did not want to be responsible for what had been done by others.
3. It was after making this disclosure, that she had something to reveal, that it is said she was taken before Chief Inspector Regina Muthure Nelson (PW2) to record a confession. PW2 told this court that she was alone in her office, dressed in civilian clothes when the accused was taken to her officer by PW1; that the accused was in good health and had no complaint whatsoever save that she stated that she had a kidney problem and her leg was painful. She stated that she first introduced herself to the accused before inquiring who the accused was; that she then explained the Evidence “Out of Court Confession” Rules to the accused step by step and informed her that she had a right to have a legal representative or any other person to be present but the accused indicated that she neither wanted a legal representative or any other person to be present. Thereafter, she explained to the accused that whatever she said would be

recorded and could be used in evidence but the accused replied that she wanted to record all that she knew concerning the death of Cosmas. It was then that PW2 recorded the confession. According to PW2 the accused recorded the confession voluntarily without any threats, coercion, intimidation or promise and that this is signified by the fact that she signed at every stage of the process. She produced the statement in evidence.

4. The 2nd accused however repudiated the statement and stated that the only thing she told PW2 was that she suffered from kidney disease and that her legs were painful and hence she had difficulty sleeping on the floor. She denied that the signatures on the confession are hers and urged this court to find that she did not make the confession and reject it.
5. I have considered the evidence by both sides carefully. I have also perused the confession. The law pertaining to recording of confessions is set out in the Evidence “Out of Court Confession” Rules. The rules set out all the parameters that a confession must meet for it to be admissible. They provide for the manner of recording the confession and the rank of the officer competent to record the confession. Juxtaposing this confession to the rules, I am satisfied that PW2 complied fully with the Rules before and after recording the statement. There is no doubt in my mind that whatever is in this statement came from the accused person.

6. It is instructive that the accused is not retracting the statement but repudiating it yet it is so detailed as to create doubt that the disclosures therein were by the recorder of the statement PW2 but not the accused. Pw2 did not know the accused person or the deceased before as would have led her to be privy to so much information concerning the subject matter. This court is also satisfied that the signatures on the confession belong to the accused person and that she made the confession voluntarily without any threat, coercion, intimidation or promise.
7. The upshot is that the confession is admissible in evidence and the same shall be admitted in evidence.

It is so ordered.

Ruling signed, dated and delivered virtually on this 19th day of March 2026.

E. N. Maina
Judge

In the presence of:

Mr. Motende for the State

Mr. Musya for all the accused persons

All 4 accused persons – present

Mary : Court Assistant/Interpreter