



Republic v Juma (Criminal Case E019 of 2022) [2025] KEHC 9301 (KLR) (30 June 2025) (Ruling)

Neutral citation: [2025] KEHC 9301 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUSIA
CRIMINAL CASE E019 OF 2022
WM MUSYOKA, J
JUNE 30, 2025**

BETWEEN

REPUBLIC PROSECUTION

AND

CHRISTOPHER OWINO JUMA ACCUSED

RULING

1. The accused faces a charge of murder of the deceased herein, Jane Atieno Ogola. The accused was arrested at the Sigomere Police Station, after he allegedly surrendered himself there, on 18th October 2022. According to PW8, No. 98175 Police Constable John Ouma, he presented himself at the station, in the company of his father. He explained that he had had a quarrel with his wife, in the course of which he might have injured her with a panga. He had blood on his clothes. He said he had followed a man into his house with his wife. He said that when he raised his panga to attack the man, as he was escaping, he cut the deceased instead, accidentally. He then left Bumala and travelled to his home at Sigomere. The accused was then handed over to Bumala Police Station.
2. The information was given to PW8, who was a Police Constable, and, therefore, he could not record a confession. The information was subsequently recorded by PW10, Tina Awino Madowo, as a confession. PW10 was a Senior Resident Magistrate. She allegedly recorded the confession on 21st November 2022, in open court, in the presence of the father of the accused person, one Peter Juma. The accused allegedly narrated how he killed the deceased, after he stormed into her house, where she was with another man. He hit her with a panga aimed at the other man. After that, he ran away to his home at Sigomere. He confessed the fatal assault to his father, who took him to the Sigomere Police Station. He was subsequently transferred to Bumala Police Station. He surrendered the panga used to the police. He then signed the confession, recorded in English, by PW10, and translated to him in Kiswahili.



3. The defence, through Mr. Were, objected to production of the confession statement by PW10, on the basis of undue influence on the accused, by the officers who escorted him to PW10. It was argued that the accused was fatigued, hence the statement was involuntary.
4. I delivered a considered ruling, on 18th October 2024, on whether to conduct a trial-within-a-trial for the purpose of admission of the said confession statement. I allowed the trial-within-a-trial.
5. The prosecution presented three witnesses, for the purposes of the trial-within-a-trial. The accused testified, but did not call a witness.
6. The first witness for the prosecution was No. 83842 Police Constable Wycliffe Chema. He collected the accused from Sigomere Police Station, where the accused had surrendered himself. He re-arrested him and took him to Bumala Police Station. He had clothes which were bloodstained. He informed the police where he had left the weapon used to cause the injury. On the day the confession was recorded, on 21st November 2022, the accused was first taken to Kisumu, for medical assessment and deoxyribonucleic acid (DNA) analysis. After that, he was taken to PW10 for reading of the confession. He was accompanied by his father, at the confession session. He said that no form of coercion or violence was used on the accused. He was given food and water. The confession was made voluntarily. He said that he bought the accused food at Kisumu, and that he had had breakfast before they left Bumala for Kisumu, and he had lunch after they got back, from Kisumu, and before they left for Busia. His father was at the station, when they got back. He said that the accused was not fatigued. He had time to rest, for two hours, at Bumala, between when they got back from Kisumu and when he was removed to be taken to Busia.
7. The second witness was No. 70819 Police Corporal Felisha Maru. He escorted the accused to Busia, for the recording of the confession before PW10. They arrived at court at 15.00 Hours. The confession was recorded at 16.45 Hours. They had left Bumala at 14.15 Hours, the Officer Commanding Bumala Police Station (OCS) and the father of the accused accompanied the accused, from Bumala to Busia. He said the confession was taken in chambers, and not in open court.
8. PW10 followed. She testified about what transpired on 21st November 2022. The accused was brought to her chambers, for recording of a confession. She did the recording in open court, but in camera, in the presence of her court clerk. The accused preferred to use Kiswahili. He asked for the presence of his father. He said that he did not need an Advocate. He was advised that his statement could be used against him. He narrated the events of 16th November 2022, about how he was eating, when the deceased came to the gate with a man. He went and knocked at her door, but she refused to open. He broke down the door and found the pair seated, talking. When he began to question the deceased, the man attacked him. He, the accused, had come armed with a panga. He raised it at the man, but it landed on the head of the deceased. He left with his panga, and fled to his home at Sigomere, to his father. He informed his father that he could not enter his house, for he had done something bad. He confessed the killing to his father, who then escorted him to Sigomere Police Station, to report the incident. He was thereafter escorted to Bumala Police Station. He gave the panga to the police. He confirmed the statement, recorded by PW10, and signed it. She testified that the team from Bumala came at about 4.30 PM. That was when she saw them. She was not aware that the accused had been taken to Kisumu, the same day, for DNA tests and mental assessment. She was also not aware that the accused had been in custody for two days. She could not assess whether he had been exposed to fatigue or influence. He appeared calm and peaceful. She stated that the accused narrated, as she typed in English, then she translated the statement into Kiswahili.



9. The accused gave his sworn statement, in the trial-within-a-trial, on a different date. He said that on 21st November 2022 he was removed from the cells at 6.00 AM and taken to Kisumu. He had not had breakfast, before they left. He was with PC Chema and CP Maru. They got to Kisumu at 8.30 AM. They left Kisumu at 12.30 PM. They arrived at Bumala at 1.00 PM. or 2.00 PM. Before he was taken to the cells, he was informed that he would be escorted to Busia. He was brought to Busia by PC Chema, CP Maru and the OCS, and a police driver. At Busia, he was taken to the office of PW10. He entered with CP Maru and the OCS and there was no other person. At the office, he was informed to follow what he was being told, if he needed help. It was about the confession. He was then told what they said had happened. He said that he was not given time to speak, and he was not warned that his confession could be used in court. He was being told what to say, and he did so. What he said was not reduced into writing, but remained mere explanations made orally. He said that he was told to say that he cut his wife with a panga. He said that was not true. He was supposed to be a witness against the person who cut her. He said that he was forced to sign the document. He said his father was not present, for if he were, he would have testified in the trial-within-a-trial. The proceedings ended at 5.00 PM. He said he had not had food the whole day. He said he felt tired at the office of PW10, and he was also hungry, and was not feeling well. He said that at the office of PW10, it was the OCS who spoke to PW10, and that he was not allowed to speak to her. He said it was PC Chema and CP Maru who had been telling him what to say, something which began at the police station. He testified that at the office of PW10, he disclosed that he had been told what to say, and had been threatened, that if he did not cooperate with that, he was going to be given punishments. He said he was the one talking or telling PW10. He said he was scared because of the threats, from PC Chema and CP Maru.
10. The parties did not submit. When the issue of a confession came up, on 8th October 2024, it was about the accused being fatigued and some form of undue influence being exerted. The accused person testified on these. How he was moved, early in the morning, on 21st October 2022, for the journey to Kisumu, before time for breakfast, and how they got back to Bumala past the lunch hour. The case was that the travelling up and down fatigued him, and that his condition was made worse by the lack of food. PW10 did not inquire into these matters, as the accused appeared calm and peaceful, and did not raise them. On undue influence, the accused stated that he had been prepared, on what to tell PW10, by PC Chema and CP Maru, before he was presented before PW10, and that even before PW10, the OCS did the same. There were threats of punishment. PW10 did not testify on the accused person being harassed or threatened in her presence. In addition, despite the accused saying that he informed PW10, of being told what to say, and of the threats, PW10 did not testify that such remarks were made.
11. Do I believe that he was fatigued, because of the travels up and down the region, and of not being given food? I do not. The journeys between Bumala and Kisumu, and back, and between Bumala and Busia, are not great, to the extent of fatiguing out the accused to a point of not being clear in his mind on what he was doing before PW10. On not being fed the whole day, between when he left Bumala early morning and late afternoon, on 21st November 2022, when the confession was recorded, I do not also believe him. I do not believe PW10 would not have noted that there was an issue with the accused, at the material time, arising from hunger and fatigue. She described him as being calm and peaceful, and not distressed one way or other.
12. Do I believe that he had been instructed on what to do or say by the detectives, and the confession was forced? He said that he started being pushed on the confession at the police station, and that continued even on the short trip to Busia. In his evidence, he did not testify to have been told anything about the confession, as they went to and from Kisumu. He did not testify on the events around his arrest on 18th November 2022, and what may have transpired between then and 21st November 2022, to provide a basis for his claim that he was prepared by PC Chema and CP Maru on how and what he was to



confess, with the threats, that accompanied that. His narration about the trip to Busia, from Bumala, did not mention any conversation with the said officers. He merely stated that he was at the back of the vehicle with other suspects. He did not testify on what happened back there. He did not mention which of the three police officers he alleged were with him at the back of the vehicle, leave alone them speaking to him.

13. He at once said that he was not allowed to talk to PW10 and that the OCS did all the talking, and at the same time he said he addressed PW10. He gave explanations to her, according to him, in line with what he had been told to say. He also, according to him, told PW10 that he had been told what to say to her, and that he had been threatened. It cannot be that he was not given a chance to speak to PW10, and then be the case that, at the same time, he did speak to her. The two narratives cannot stand side by side, and that should go to credibility.
14. Overall, I am not persuaded, that the statement recorded from the accused, by PW10, was involuntary, for being tainted with undue influence or threats. The same shall be admitted in evidence as an exhibit.
15. The matter shall be mentioned on 14th July 2025, when a date shall be fixed, for PW10 to complete her testimony, and when testimonies of the remaining prosecution witnesses shall be recorded. It is so ordered.

DELIVERED, VIA EMAIL, DATED AND SIGNED IN CHAMBERS, AT BUSIA, ON THIS 30TH DAY OF JUNE 2025.

WM MUSYOKA

JUDGE

Mr. Arthur Etyang, Court Assistant.

Advocates

Mr. Tony Onanda, instructed by the Director of Public Prosecutions, for the Republic.

Mr. Were, Advocate for the accused person.

