

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA HOLDEN AT
RUKUNGIRI
HCT-05-CR-CSC.NO.0056 OF 2007

UGANDA :::::::::::::::::::::::::::::::::::::::

PROSECUTOR

VERSUS

KOBUSHESHE KAREVERI:::::::::::::::::::::

ACCUSED

BEFORE: HON. JUSTICE AUGUSTUS KANIA

RULING:

During the hearing of this case when the prosecution attempted to introduce a charge and caution statement allegedly recorded by D/ASP Gumikiiriza Kalinkuza from the accused, the accused objected to it on grounds that though the document bore his signature, he was given it to sign without knowing its contents and that he did not make that said statement.

I accordingly ordered a trial within a trial whether the accused made the charge and caution statement and if he made it whether he made it voluntarily.

To prove the charge and caution was made by the accused and voluntarily at that the prosecution called PW1 Gumikiiriza Kalinkuza D/ASP. He testified in 2005 he was the O/C C.I.D of Kanungu holding the rank of Inspector of Police. On the 16th August 2005 at 5.00p.m the accused who was in cells and a suspect of defilement was taken to his office by one of the detectives working under him for purposes of recording the accused's charge and caution statement. He testified that after asking the detective to leave, he remained in his office with the accused. The accused appeared normal and the two of them communicated between themselves in Runyankole which is their common vernacular. PW1 Gumikiiriza also testified that he then proceeded to read the charge of defilement C/S 129 (1) of the Penal Code Act to the accused after which he administered the words of caution to him. After establishing that the accused understood the charge

and caution, the accused signed the charge and caution, the witness also counter signed. The accused then volunteered to give a statement, which he read over to the accused who on finding that it was correct signed it. The witness also signed it.

The defence called DW1 Kobusheshe Karaveri; the accused, who testified that he was arrested on 15/8/2005 and taken to Nyamurama Police Post where he was assaulted by a police officer. Later when he had been transferred to Kanungu Police Station and detained another police officer burnt him with a flat iron.

It was this witness' evidence he met PW1 Gumikiiriza Kalinkiizi in his office at the Police Station and he told him to admit the offence he had been charged with so that he could be released but he refused to admit the offence. It was also his evidence that as he sat with the officer in his office across a table, the very flat iron with which he had earlier been burn was in that room and he feared he would be burnt again. He testified that he was given a document which he signed without knowing the contents because of fear that he was going to be burnt with the flat iron. He reiterated that he never made a statement at Kanungu Police Station.

I have very carefully considered the evidence for the prosecution and that of the defence and I am inclining to believe that the accused gave a charge and caution statement to PW1 D/ASP Gumikiiriza Kaliinkiza. It is unconceivable that a police officer would sit in his office and invent a story about the accused person more particularly when it is not shown that he had a personal interest in the offence being investigated. The pass taking steps in procuring the statement in question must have been taken in securing this statement. In these circumstances the issue to decide is not whether the accused made the statement but rather whether he made it voluntarily.

Section 23 of the Evidence Act provides as follows;

- (1) No confession made by any person while he or she is in the custody of a police officer shall be proved against such person unless it is made in the immediate presence of –

- (a) a police officer of or above the rank of assistant inspector.
- (b) -----

Section 24 of the Evidence Act provides:-

“A confession made by an accused person is irrelevant if the making of the confession appears to the Court, having regard to the state of the mood of the accused person and to all the circumstances, to have been caused by any violence, force, threat, inducement or promise calculated in the opinion of the Court to cause an untrue confession to be made”.

Section 25 provides that if such confession as referred to in Section 24 is made after the impression caused by any such violence, force, threats, inducement or promise help, in the opinion of the Court, been full removed, it is relevant.

In the instant case the confession is issue was made by the accused in the immediate presence of a police officer above the rank of assistant inspector because A/ASP Gumikiiriza was then an Inspector of Police, as envisaged in Section 23(1)(a).

The accused endeavored in his testimony to portray his charge and cautions statement as being irrelevant by the fact that he was assaulted by a police officer when he was arrested and taken to a police facility. He further testified that prior to him being made to sign the document he was burnt with a flat iron. By this evidence the accused implied that he made the statement under violence, force and threat. He specifically stated that he signed it because he feared that he would be burn again if he did not sign it.

From the record and from the evidence of the accused he was assaulted at the police post where he was first detained and again at Kanungu Police Station.

When the accused was allegedly assaulted at Nyamirama Police Post it could not have been to force him to confess to the crime because the said assault did not occur at

Kanungu Police Station where the charge and caution statement was made. The second instance of being burnt with a flat iron is far fetched.

Even if such an incident took place at Kanungu Police Station which I consider very improbable, it is not claimed that it was done with a view to getting the accused to admit the offence. Equally I don't believe the flat iron was in the room in which the accused made the statement. Even if these two instances of assault had been true I would find them to have been too remote to have a bearing on the voluntary making of the charge and caution statement by the accused.

All in all I find that the accused made the charge and caution statement in issue voluntarily without any influence of violence, force, threat and inducement or promise calculated to cause an untrue confession to be made. The prosecution will therefore be at liberty to introduce the same evidence.

Augustus Kania

Judge

1/9/2008

In the presence of

Mr. Rukundo – Resident State Attorney

Mr. Ndimbirwe for the accused

Accused in Court

Mr. Turinawe Court Clerk

Assessors Asiimwe Grace

And Bahemuka Jerome

Augustus Kania

Judge

1/9/2008