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LEGAL NEWS

12 June 2024



Court of Appeal Guides on Conflicting Precedents and the Fate of ill-Procured Cautioned Statement

In Criminal Appeal No. 465 of 2022, the Court of Appeal of Tanzania (the Court) had a situation requiring the presiding Justices to determine the position to follow where there were two conflicting positions of the Court regarding the legality of a cautioned statement admitted without objection during trial. Based on the principle of the accused's best interest, the court decided that a cautioned statement recorded beyond the time prescribed by the law, under section 50(1) of the Criminal Procedure Act (the CPA), is offensive to the law. Thus, even though the appellant did not object to its admission during the trial, the legality of such a cautioned statement can still be determined by any court, including the appellate court as it is a question of law.

Background of the Case

The Appellant in this case was charged with murder of his daughter before the High Court at Kigoma. Based on the circumstantial evidence and a cautioned statement adduced by the prosecution, the trial court convicted and sentenced the accused to death penalty. The Appellant was discontent with the trial court's decision and decided to appeal to the Court. The main ground of appeal was that the prosecution case was not proven beyond reasonable doubt as the circumstantial evidence relied on by the trial court was not watertight as required by the law. Besides, the cautioned statement containing the Appellant's confession was tainted with false statements. In addition to the Appellant's grounds, the Court suo motto required the counsel for both parties to address the Court on the legality or otherwise of the admitted cautioned statement, which was recorded on 1 September 2021, while the Appellant had been detained at the police from 29 August 2021.

Arguments Raised by the Parties

In response to the matter that the Court raised suo motto, the Appellant argued that the cautioned statement was unlawful. The statement was taken out of time in violation of section 50(1) of the CPA which requires an interview of a restraint person in respect of an offence not to exceed four hours from when the person is restrained. The interview period can only exceed four hours if an extension of time is done based on the provisions of section 51 of the CPA.

While citing the Court's decision in the case of Tabu Sita v. R, Crim. App. No. 279 of 2019, the Respondent argued that if the Appellant did not object to the admission of the cautioned statement before the trial court, the statement could not be challenged on appeal. Further, the Respondent argued that

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ECRA Attorneys offers professional services in various areas of the law ranging from Taxation (both tax litigation and tax advisory); Corporate; Employment; Immigration; Intellectual property; Litigation, Arbitration and Regulatory; Engineering, Procurement and Construction (EPCs-related Services); Banking and Project Finance, Real Estate; Capital Market and Securities; Oil and Gas, Mining Law; Competition Law; Telecommunications and ICT Law; Payment Systems Law; Insurance Law and International Trade Law and Financing.

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even though the Appellant was restrained on 29 August 2021, the Appellant's detention in respect of murder became effective on 1 September 2021 when it was confirmed that the missing child had been murdered.

Determination of Issues and Decision of the Court

The Court resolved that the issue to be determined was whether it could question the illegality of a cautioned statement admitted without objection during trial. The Court noted two conflicting positions developed by the Court regarding its jurisdiction to question the legality of a cautioned statement admitted without objection during trial.

The first position states that if a cautioned statement is admitted without objection, the issue cannot be raised or entertained at any subsequent time, including on appeal. The second position stated that any point of law may be raised at any time, including at an appeal stage. So, if on appeal the Court finds that a confession was not recorded according to law, the statement is invalid, even where it was not objected to at the time of its admission.

In determining which decision to depart from, the Court was guided and cautioned by the principles in the Doctrine of Stare Decisis. The Court noted that the presence of conflicting decisions is one of the reasons to depart from its previous decision. In deciding which decision to depart from, the Court reiterated two guiding principles. First, is the principle of the most recent decision stating that a recent decision is to be adopted as a good law. Secondly, is the accused's best interest principle stating that in criminal law, where there are two propositions of a fact, one favouring the accused and another adverse to his interest, the Court should adopt a position favourable to the accused. The second principle aligns with the rationale of the requirements of proof beyond reasonable doubt and the constitutional principle of presumption of innocence in criminal law.

Based on the above reasoning, the Court adopted the second position and decided that although the cautioned statement was not objected to during the trial, having been recorded about three days from when the Appellant was restrained in police custody, the confession was offensive of the provisions of section 50(1) of the CPA. The cautioned statement was discarded as an exhibit. Thus, the appeal was allowed and the court affirmed that the prosecution case was not proven beyond reasonable doubt as the circumstantial evidence was also found not to be watertight as the law requires

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