

SUPREME COURT OF SEYCHELLES

Reportable

CR90/2023

In the matter between:

Republic

(rep. by Mrs. Perreau)

Prosecution

and

Stella Wangari Wairimu

(rep. E. Chang Thiou)

Accused

Neutral Citation: *Republic v. Wairimu* (CR90/202) [2025] (3rd February 2025)

Before: A. Madeleine, J

Summary: *Voire Dire*

Heard:

Delivered: 3rd February 2025

ORDER

Based on all the above, I find that the statement of the Accused is voluntary and admissible.

I therefore set aside the objections of the Accused.

RULING

A. MADELEINE, J

Background

1. This Ruling arises from the objection by the defense to the production and admission of a Statement Under Caution recorded from the Accused on 6th November 2023.
2. The Accused stands charged under 'Amended Formal Charge' dated 22nd January 2024 with the offence of importation of a controlled drug contrary to section 5 of the Misuse of Drugs Act, 2016, and punishable under same section 5 and the Schedule to the Act.
3. The trial commenced on 6th June and on prosecution's attempt to produce the Statement Under Caution on 19th June 2024, the defence counsel objected to the production and admission

thereof on the grounds that the statement was obtained in breach of Rule II of the Judges' Rule, 1964 and upon the promise of deportation being held out to the Accused by the police.

4. The Court ordered a *voire dire* to determine whether the statement under caution is admissible in these criminal proceedings.

Prosecution's Evidence

5. The prosecution called two witnesses, WPC Nicolette Marie who recorded the statement from the Accused and WPC Esther Andre who witnessed the recoding of the said statement.
6. WPC Nicolette Marie testified that on 16th November 2023 she was on duty at the Organized Crime Unit where she recorded a statement from the Accused in the presence of WPC Esther Andre. The statement was recorded upon the request of the Accused person. WPC Marie first applied the caution under Rule II at 7:43 am informing the Accused that she was not obliged to say anything unless she wished to do so and that whatever she stated will be reduced in writing and may be given in evidence. She started recording the statement from the Accused at 7:45 am and ended at 11:50 am. According to the witness, the Accused voluntarily recounted her story which was reduced in writing. The Accused was fine throughout the recording of the statement and no threats nor promises were made to the Accused. The statement has been signed by the Accused, WPC Esther Andre as a witness and WPC Marie as the recording officer and also contains the following certification at the back –

"[Okay I write my certification at the back] that I was the one recording the statement upon the request of the suspect in presence of my colleague WPC Esther Andre, same started at 0744 ended at 1150. She gave me her statement voluntarily there were no threat, promise or inducement made to her."

7. The witness further testified that prior to signing the statement, the Accused was given the opportunity to go over the said statement and she was happy with it and signed the same voluntarily. The witness further pointed to the back of the statement where she had signed the said statement and also pointed to the signature of the witnessing officer and of the Accused. The Accused had also signed the caution on page 1 of the statement to the effect that she was not obliged to say anything and signed on each page of the statement.

8. In cross-examination, WPC testified that the Accused was cautioned and gave her statement voluntarily, but she was not informed prior to the recording of the statement that she had the right to contact a lawyer. She denied refusing the Accused's request to seek the services of a lawyer and that she promised the Accused that if she gave a statement, she will be deported to Kenya. The Accused never requested to contact any lawyer and she was assisted with a telephone call to her family.
9. WPC Esther Andre testified that she is based at the Narcotics Investigation Unit. On 6th November 2023 she witnessed the recording of a statement from the Accused by WPC Nicoletta Marie. The Accused was first cautioned and then interviewed the Accused. According to the witness, WPC Nicoletta Marie applied the following caution before the recording of the statement –

“Ou pa oblize dir naryen ditou anwen ki ou le dir kekesoz, e sa ki ou dir in kapab ganny pran an ekri e donen koman en levidans”

10. The recording started at 0744 and ended at 1150. After the recording of the statement, WPC Nicoletta Marie read the statement over to the Accused which was the same as the Accused had stated verbally. The statement was given voluntarily. The Accused, whom the officer identified in court, signed the statement after which WPC Nicoletta Marie and herself also signed. The witness confirmed that her signature is on the statement shown to her.
11. In cross-examination the witness denied that she was not present or seated at the far back in the room while the statement was being recorded. She explained that while the statement was recorded in office of the investigating officers. On the day in question all other officers had been asked to leave the room. On the Accused, WPC Marie and herself remained in the room. WPC Marie sat at her desk and the suspect was seated next to her. The witness sat her own desk which is not far from WPC Marie's desk further back, but she could hear everything that was being said. She only left the room once to use the bathroom. WPC Andre maintained that the statement was recorded voluntarily from suspect after she had been informed of all her rights including her right to contact a lawyer. At the time no arrangements were made for a lawyer to assist the Accused, but the Accused gave a statement. According to her, WPC Marie may have forgotten that she had informed the Accused of her right to contact a lawyer. The

witness denied that any promises of deportation were made to the Accused as deportation is not within their mandate.

12. In re-examination, it was clarified that the officer witnessed WPC Marie apply the caution to the suspect prior to recording the statement and reading the statement after the recording.

Evidence of the Accused

13. The Accused testified that the police asked her to cooperate with them so that she could go back to Kenya. She agreed to cooperate and proceeded to tell them everything that happened from the time that she started her journey to Seychelles upon their promise of deportation.
14. The Accused further testified that when the statement was being recorded, she only sat next to one woman police officer. There was another woman police officer who sat at the back of the room and never came to sit with them. The Accused also testified that she requested to consult with a lawyer whereupon the recording officer told her the following –

“... no need of a lawyer just tell us, this will help you” (Emphasis added)

15. The Accused went on to dispute even being cautioned and that the statement was read over to her or given to her for her to read the same. According to her, she was just asked to sign at various places on the statement. The Accused maintained that had the promise of deportation not been made to her and that had she known that things would turn out this way, she would not have cooperated with the police.

16. In answer to the question whether her statement was voluntary, the Accused stated as follows –

“No, if I knew all this would have happened, I would not write the statement.”

(Emphasis added)

17. In cross-examination, the Accused maintained her testimony that the statement was given on the promise of deportation and that she was neither cautioned and nor informed of her constitutional rights prior to recording. She generally denied all the prosecution’s suggestions that the statement was voluntary but accepted that she cooperated to the police, gave a statement that was truthful to the police and that she signed the said statement multiple times. She

remained adamant that the statement was based on the promise made to her by the police and that she signed upon being dictated where to sign by the police –

“Q: So you cooperated with the police, you gave the statement voluntarily and the statement is accurate that is what you are saying?”

A: I was promised that I why I wrote the statement and that is why I cooperated. The story I say yes it was the same and truth.

.....

Q: You signed the statement multiple times is that correct?

A: Yes”

Q: You did, you even signed where you made a correction, isn't that correct?

A: I did not know it is a correction.” (Emphasis added)

18. In re-examination, Accused maintained her version as to the circumstances in which she gave the statement to the police.

19. Both Counsel for the prosecution and Counsel for the Accused submitted to the court. The Court is grateful to Counsels for their submissions and authorities. These have been fully considered by the court although not reproduced herein.

Analysis

20. The challenge to the admissibility of the statement of the accused is based upon –

- (i) The alleged failure of the police to inform the suspect, prior to the recording of the statement, of her right to counsel and that she could contact a counsel before she gave a statement;
- (ii) Promises of deportation to Kenya if she made a statement.

21. It is trite that a confession would be admissible in evidence if it was made voluntarily, that is without coercion/oppression or inducement/hope of advantage held out by a person in authority [vide: *Ibrahim (1914) AC 599; Callis v Gunn (1964) 1 QB 495*]

22. In the present case, the Accused alleges that she gave the statement sought to be produced simply because the officer had promised her that if she gave the statement she would be deported to Kenya and she was not informed of her right to consult with a lawyer.

23. I will first consider the alleged promises of deportation made to the Accused person.

24. The Accused maintained that she was promised that if she cooperated with the police she would be deported to Kenya. The allegation is denied by the police who also testified that it is not within their powers to order deportation of suspects.

25. I have carefully scrutinized the evidence and I do not find any traces of promises of deportation held out by WPC Marie or WPC Andre in order to obtain the statement from the Accused. This remains a mere allegation.

26. In relation to the alleged failure to inform the Accused of her right to consult with a legal practitioner prior to the recording of the statement, the Accused testified that when she requested to consult with a lawyer, she was told that there was “...no need of a lawyer” and to “just tell us, this will help you.”

27. I consider that –

“The Criterion for admission of a statement is fairness. The voluntary nature of the statement is the main factor in determining fairness. If it is not voluntary it will not be admitted. If it is voluntary, that constitutes a strong reason in favour of admitting it, notwithstanding a breach of a Judges’ Rules; but the court may rule that it would be unfair to do so even if the statement was voluntary.” [Vide: Peart v The Queen [2006] UKPC 5; Williams v The Queen [2006] UKPC 21]

28. And that –

“A voluntary confession obtained in breach of the Rules or a suspect’s constitutional rights are not per se inadmissible: [Vide: Allie Mohamed v. State [1999] 2 WLR 552]

29. The overall circumstances in which the statement was recorded from the Accused are as follows.
30. According to the WPC Maries' evidence, the recording of the statement started at 07:43-44 and ended at 11:50. I also note that the recording of the statement took place in the office of the investigating officers and that throughout only WPC Marie – the recording officer –, WPC Andre – the witnessing officer – and the Accused person were in the said office. WPC Andre left the office for a short bathroom break. It is not clear whether the recording of the statement was paused during this time. Furthermore, I note that WPC Andre who witnessed the recording of the statement was, at all times while the statement was being recorded, seated at her own desk which is at the back of the office.
31. I am satisfied that the Accused was cautioned prior to the recording of the statement as attested by her signature next to the caution pointed out to the Court. At this point, however, it is unclear whether the Accused was truly informed of her constitutional right to counsel prior to the recording of the statement. I believe WPC Marie when she testified that she did not inform the Accused that she may consult with a legal practitioner. I cannot, however, attach much weight to WPC Andre's testimony, which is in stark contradiction to that of the recording officer. It is clear therefore that following the caution, the Accused was not informed of her constitutional right to counsel but nonetheless she proceeded to give a statement. The statement was read to her, she made one correction to the statement and signed each page of the said statement. The statement is also signed by the recording officer and the witnessing officer.
32. In absence of evidence of coercion, oppression and promises made to induce the Accused to make the confession, I find that the statement is voluntary and is therefore not automatically inadmissible. In order to admit such a statement, I must be satisfied that this will not have an adverse effect on the fairness of the trial such that justice requires that the statement is excluded.
33. I consider that in terms of the caution administered, the Accused was not compelled to give the statement. She did so voluntarily and went as far as maintaining, in the *voire-dire*, that the contents of the statement are the truth but seeks to prevent the prosecution from relying on it because she was not deported and because she was not informed of her right to counsel.

34. Notwithstanding my finding that following administration of the caution, the Accused was not informed of her right to counsel prior to the recording of the statement, I consider that the Accused has been legally represented by Counsel throughout these proceedings.

35. Based on all the above, I find that the statement of the Accused is voluntary and admissible.

36. I therefore set aside the objections of the Accused.

Signed, dated, and delivered at Ile Du Port, Mahe on this 3rd day of February 2025.


A. Madeleine, J

