**Beronda v Uganda**

**Division:** Court of Appeal at Kampala

**Date of judgment:** 31 January 1974

**Case Number:** 117/1973 (15/74)

**Before:** Sir William Duffus P, Spry V-P and Mustafa JA

**Sourced by:** LawAfrica

**Appeal from:** High Court of Uganda – Musoke, J

*[1] Evidence – Confession – Recorded by magistrate alone – Proceeding proper – Police officer’s*

*presence undesirable – Evidence Act* (*Cap.* 43), *s.* 24 (*U.*).

**JUDGMENT**

The considered judgment of the court was read by **Spry V-P:** The appellant was convicted of murder and sentenced to death. The basis of the conviction was a confession, which the trial judge found to have been made voluntarily, and there was some circumstantial evidence pointing towards the appellant. The defence at the trial was a complete denial. After studying the record of appeal and the very full memorandum of appeal lodged by the appellant and after hearing the appellant in person on 20

November 1973, we were satisfied that there was no merit in the appeal and we dismissed it.

There is, however, one matter of procedure that arose in the trial and which, we understood, is causing some difficulty and we think we should express our view on it.

Prior to August 1971, confessions made to police officers were, under s. 24 of the Evidence Act (Cap.

43), admissible in evidence, provided the officer was of or above the rank of corporal and provided there had been substantial compliance with rules prescribed by the Minister. S. 24 was, however, repealed by the Evidence (Amendment) Decree 1971 and replaced by a new section which, so far as is relevant, reads as follows:

“24. (1) No confession made to a police officer shall be proved against any person accused of any offence.

( 2) N o confession made by any person whilst he is in the custody of a police officer shall be proved against any such person, unless it be made in the immediate presence of a magistrate.”

Sub-s. (1) of this section is quite clear, but sub-s. (2) Appears to have been interpreted in varying ways.

In the case with which we are concerned, it was understood that the appellant wished to make a statement. He was taken before a magistrate in his chambers.

The magistrate sent the police away. He ascertained the language which the appellant wished to use and obtained the services of a court clerk as interpreter. Through the interpreter, the magistrate explained to the appellant the nature of the charge against him and told him that he was free to make a statement or to say nothing, whichever he preferred, adding the caution that if he chose to make a statement, it would be recorded and might be used in evidence. The record shows that the statement made by the appellant was recorded in his own words and it was signed by the appellant and the interpreter. Both the magistrate and the interpreter gave evidence at the trial and their evidence leaves no doubt that the appellant was fully advised of his rights, that he was under no compulsion of any sort and that his statement was entirely voluntary.

Mr. Kagaba, who appeared for the appellant at his trial, submitted to the trial judge that this procedure was irregular, that a police officer should have been present and that the statement ought to have been recorded by the police officer, with the magistrate merely present. The judge upheld this submission, saying that in his opinion the statement ought to have been made to a police officer in the immediate presence of a magistrate. He held, however, that the irregularity had occasioned no injustice. With respect, we think that there was no irregularity and that the procedure adopted by the magistrate was entirely correct. Under sub-s. (1), no confession made to a police officer is admissible in evidence.

That, in itself, is sufficient to dispose of Mr. Kagaba’s argument. There is nothing in sub-s. (2) to prevent a police officer being present but there is nothing to require it, and it is, in principle, undesirable. The law was changed because there were frequent submissions, some not without justification, that confessions had been obtained by police officers by intimidation and even by the use of force. The new law is intended to ensure that all confessions relied on are truly voluntary. The best way to ensure this is by the prisoner being alone with the magistrate, except for the interpreter, where one is needed. If a police officer were present, there is always the danger that it might be alleged that his presence operated as a continuing reminder of an earlier threat. This would defeat the purpose of the new legislation. We think, therefore, that as a rule of practice, the magistrate should always request any police officers who may have accompanied a prisoner to leave his chambers while the prisoner is with him.

We may add that the changes introduced by the Evidence (Amendment) Decree bring the law of

Uganda on this subject into line with that which has long applied in Tanzania where the invariable practice is that followed by the magistrate in this case.

Reference was also made in the High Court to the Evidence (Statement to Police Officers) Rules. We are quite satisfied that those rules were revoked by the repeal of s. 24.

During these sessions, we determined another appeal in which a confession had been recorded. In that case, a charge and caution statement was taken by a magistrate in open court, with at least two police officers present. For the reasons we have given, we regard that practice as undesirable.

We would add that we have seen administrative instructions dated 2 March 1973, entitled “Recording of Extra-Judicial Statements” and issued to all magistrates by the Chief Justice, which we think, with respect, admirably sets out the procedure that should be followed.

*Appeal dismissed.*

The appellant appeared in person.

For the respondent:

*C Rwaheru* (State Attorney)