**Swai and others v Republic**

**Division:** High Court of Tanzania at Mwanza

**Date of judgment:** 22 October 1973

**Case Number:** 270/1973 (106/74)

**Before:** Mfalila Ag J

**Sourced by:** LawAfrica

*[1] Evidence – Confession – Co-accused – Whether evidence against co-accused – Evidence Act, s.* 33

(*T.*)*.*

*[2] Evidence – Confession – Retracted confession – Procedure to be followed – Whether corroboration*

*necessary.*

*[3] Evidence – Confession – Whether extra-judicial statement amounts to confession.*

*[4] Evidence – Extra judicial statement – Admissibility of, as against co-accused, where statement does*

*not amount to confession – Evidence against maker only – Evidence Act, s.* 33 (*T.*)*.*

**Editor’s Summary**

The three appellants were jointly charged, along with two other persons, with stealing goods in transit and all except one were convicted. The evidence against the first appellant consisted wholly of the extra-judicial statements, implicating him, made by his co-accused. The question was whether these statements or any of them amounted to confessions so as to render them evidence against the appellant under s. 33 of the Evidence Act. The case against the third appellant consisted of a retracted extra-judicial statement which he made to a magistrate. The question was whether this statement had been properly admitted. **Held –**

(i) Proved confessions of an accused are evidence within the meaning of s. 3;

( ii) a court may convict a co-accused solely on such confession;

(iii) a trial court can act on a retracted confession in the absence of corroboration provided that it is otherwise fully satisfied in the circumstances of the case that the confession must be true

(*Tuwamoi v. Uganda* (9) followed);

(iv) Failure to determine the voluntary nature of the third appellant’s statement was a defect which vitiated his conviction.

Appeals of first and third appellants allowed.

**Cases referred to Judgment:**

(1) *R. v. Mutwiwa* (1935), 2 E.A.C.A. 66.

(2) *R. v. Labasha* (1936), 3 E.A.C.A. 48.

(3) *R. v. Keisheimeiza* (1940), 7 E.A.C.A. 67.

(4) *Gathungu v. R*. (1953), 20 E.A.C.A. 294.

(5) *Gopa v. R*. (1953), 20 E.A.C.A. 318.

(6) *Onyango Otolito v. R*., [1959] E.A. 986.

(7) *Ezera Kyabanamaizi v. R*., [1962] E.A. 309.

(8) *Kamau v. R*., [1965] E.A. 501.

(9) *Tuwamoi v. Uganda*, [1967] E.A. 84.

(10) *Anyangu v. R*., [1968] E.A. 239.

(11) *R. v. Melanyi*, Cr. c. 59 of 1971 (unreported).