Ofmedy Mussa Menga – Senior State Attorney
Study Notes – found at a free "Kifii Criminal Law Class" 0767154141 WhatsApp & Telegram
instagram@kifii_sheria, twitter@kifii_sheria

A CHECKLIST FOR TRIAL WITHIN TRIAL OR INQUIRY

POINTS TO NOTE

Trial within trial refers to a mini trial conducted within a main trial to establish admissibility of a disputable written confession statement (cautioned statement or extra-judicial statement) which has been challenged by the defense/accused person.

During hearing of the case, before a confession statement is admitted in court as an exhibit, as a matter of fair trial, the accused must be given opportunity to comment on it. Should he object by **retracting** or **repudiating** the statement, the Court must stop the main trial and conduct a mini-trial to clear the objection first before it decides whether or not to admit it. **Mwangi Nyange vs REG. [1954] 21 EACA 377** and **Saganda Saganda Kasanzu Vs R, Criminal Appeal No.53 of 2019 CAT Dodoma (unreported) pg.20**.

1. In subordinate courts it is called an "**inquiry**" while in the High Court a "**trial within trial**". However, in both types of Courts it is conducted in the same manner.
   - ✓ See **TWAHA ALLY &5 OTHERS V R, Criminal Appeal No.78 of 2004 CAT DSM (unreported).**
2. Note that, trial within a trial is a separate trial from the main trial, hence the procedure of conducting trials should also be observed.
   - ✓ **Jeneroza Petro vs R Criminal Appeal No.269 of 2016 CAT Tabora (unreported) pg.12**.
   - ✓ see procedure in **Seleman Abdallah and 2 Others v. Republic, Criminal Appeal No. 384 of 2008 (unreported) pg.14**
3. It takes in the form of a normal trial where the prosecution will call upon witnesses to prove against what was objected, the accused will defend his grounds of objection and call witnesses if any and the court will make a ruling on admissibility of the statement.
   - ✓ **Nyeura Patrick v R Criminal Appeal nO. 73 of 2013 CAT Mwanza (unreported),**
   - ✓ **Twaha Ali and 5 others v R Criminal Appeal No. 78 of 2004,**
   - ✓ **PETER EPHRAIM WASAMBO VS DPP, Criminal Appeal No.386 of 2018 CAT Mbeya (unreported)**

4. One advocate cannot represent accused persons whose statements incriminate each other.

   ✓ **Elias Mwaitambila and three others v Republic, Criminal Appeal No. 414 of 2013, CAT Mbeya (unreported).**

5. It is no longer mandatory for the trial before the High Court to be with the aid of assessors. However, if the High Court opts to involve them, they must retire during trial within trial. Assessors get involved in the trial as laymen and their opinion is expected to be that of a lay person of the respective community; their lay mind ought not to be disturbed or influenced by matters of law determined during the mini-trial.

   ✓ See **Msigwa Matonya & 4 others v R, Criminal Appeal No.492 of 2020 CAT DSM (unreported).**

6. After the Court has pronounced ruling on that mini-trial, assessors should be called back to resume their role. They must be present at the time of admission and reading of the statement.

   ✓ ***Denis Mwalongo & Another vs Republic, Criminal Appeal No. 116 of 2014 CAT Mbeya (Unreported) pg.5,***

   ✓ ***Tibashekerwa Gaspary & Another vs Republic, Criminal Appeal No. 122 of 2012 CAT (unreported) pgs.13&14***

STEPS TO BE FOLLOWED BY COURTS WHEN CONDUCTING TRIAL WITHIN TRIAL OR INQUIRY

The Court of Appeal of Tanzania insisted in **Seleman Abdallah and 2 Others v. Republic, Criminal Appeal No. 384 of 2008 (unreported) pg.14** borrowing a reasoning from the East African Court in **RASHID & ANOTHER V REPUBLIC [1969] E. A. 138** which enumerated the procedure to followed including the followings:-

(i) When an objection is raised as to the voluntariness of the statement intended to be tendered as exhibit, the trial court must stay the proceedings.

(ii) The trial court should commence a new trial from where the main proceedings were stayed and call upon the prosecutor to adduce evidence in respect of that aspect of voluntariness. The witness must be sworn or affirmed as mandated by section 198 of the CPA.

(iii) Whenever a prosecution witness finishes his evidence the accused or his advocate should be given opportunity to ask questions.

(iv) Then the prosecution re-examine its witness.

(v) When all witnesses had testified, the prosecution shall close its case.

(vi) Then the court is to call upon the accused to give his evidence and call witnesses, if any. They should be sworn or affirmed as in the prosecution side.

(vii) Whenever a witness finishes the prosecution to be given opportunity to ask questions.

(viii) The accused or his advocate to be given opportunity to re-examine his witnesses.

(ix) After all witnesses have testified, the accused or his advocate should close his case.

(x) Then a ruling to follow.

(xi) In case the court finds out that the statement was voluntarily made, (after reading the ruling) then the court should resume the proceedings by reminding the witness who was testifying before the proceedings were stayed that he is still on oath and should allow him to tender the statement as an exhibit. The court should accept and mark it as an exhibit. The contents should be read out in court.

(xii) In case the court finds that the statement was not made voluntarily, it should reject it.