Republic v Rotich (Criminal Case E027 of 2020)
[2024] KEHC 13209 (KLR) (30 October 2024) (Ruling)

Neutral citation: [2024] KEHC 13209 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAKURU

CRIMINAL CASE E027 OF 2020

HI ONG'UDI, J

OCTOBER 30, 2024

BETWEEN

REPUBLIC ..... PROSECUTOR

AND

ARNOLD KIPLANGAT ROTICH ..... ACCUSED

RULING

1. In the process of testifying before this court on 14th October, 2024, PW10 sought to produce his report, on documents he had examined. It was at this point that Mr. Ikua for the accused objected to its production on the ground that the accused's hand writing samples were taken without the accused's consent yet they are incriminating.

2. Further that no order for sample taking was sought for from the court. He based this objection on Article 50(2) of the *Constitution*. He finally cited the case of *Republic v Mark Lloyd Stevenson* [2016] eKLR paragraphs 30-36 in support.

3. M/s E. Okok prosecution counsel in response submitted that PW10 only carried out his work as an Examiner of the documents that were handed to him by the DCIO. She urged that what was being raised should have been put to the investigating officer.

4. I have had an opportunity of reading the ruling by Ngugi J (as he then was) in *Republic v Mark Llyod Stevenson* (*supra*). It related to an email received by a witness plus an attached document. The same had never been authenticated. Secondly Ngugi J found that the email dated 9th March, 2011 was wrongly excluded as a "confession" for the email was authored long before the accused was charged with an offence. It had nothing to do with sample taking.

5. In this case most of the witnesses referred to the letters found at the scene of crime. The police took possession of the letters and in the course of the investigations took handwriting samples from the accused who is the suspect for the purpose of identifying who wrote those letters.

6. In the case of *Richard Dickson Ogendo & 2 others v Attorney General & 5 others* [2014] Majanja J (now deceased) status thus:

> "To my mind the privilege of an accused person not to incriminate himself, protects against compulsory oral examination for the purposes of extorting unwilling confessions or declarations inflicting the accused in the commission of the crime".

7. Similar observation were made in:

   i. *Republic v John Kithyululu* [2016] eKLR

   ii. *Republic v Amos Kipyegon Cheruiyot* [2016] eKLR

   iii. *Republic v Timothy Mwendwa Gichuru & 2 others* [2017]

8. In the present case the recovery of the letters at the scene was not with the assistance of the accused person. The accused had nothing to do with the recovery for one to say he gave incriminating evidence.

9. The police had a duty to know who authored the recovered letter/letters. At no point from the beginning of this case did the accused claim to have been forced to give his handwriting samples.

10. Lastly the Investigating officer who had the handwriting samples taken testified before this court as PW9. He was never asked in cross-examination any single question on the way the samples were taken or why they were taken

11. Provision of the samples for testing is part of the investigation to establish who wrote the letter/letters found at the scene.

12. My finding is that provisions of handwriting samples does not infringe on the right to fair trial. For that reason, I find no merit in the objection raised which is hereby dismissed. PW10 will be recalled to complete his testimony.

13. Orders accordingly.

DELIVERED, DATED AND SIGNED THIS 30TH DAY OF OCTOBER, 2024 IN OPEN COURT AT NAKURU.

H. I. ONG'UDI

JUDGE