



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

CRIMINAL CASE NUMBER 22 OF 2016

REPUBLIC.....APPLICANT

VERSUS

SAMSON MITHIKA ALIAS KABOI.....RESPONDENT

RULING

Before me is a Notice of Motion Application brought pursuant to **Section 118 and 121 (1) of the Criminal Procedure Code CAP 75 of the Laws of Kenya** where the Applicant seeks the following orders:

- 1. THAT this Application be deemed fit for admission for hearing on priority basis.**
- 2. THAT this honourable court does make an order that blood samples be taken from the Respondent for analysis by the Government Chemist.**
- 3. THAT there be no orders as to costs of this application.**

The said application is premised on the following grounds:

- 1. The Respondent is currently remanded at Meru GK awaiting to take plea in Criminal case number 22 of 2016.**
- 2. That it is in the interests of justice that the said blood samples be taken from the Respondent by the Government Chemist for analysis.**

Chief Inspector Nicholas Muraguri the investigations officer in this case, deposed that the 1st accused person was arrested on 25th April 2016 as a suspect of murder and a knife plus clothes were recovered which contained blood stains.

He further deposed that the investigating officer had taken exhibits to government chemist and the analyst asked for samples of blood from the first accused person for further investigation.

He contended that it was in the interest of justice for the blood samples from the accused to be taken for purposes of analysis.

The Application was opposed via a Replying Affidavit sworn by the accused person where he deposed

inter alia that after arrest for alleged murder police officers raided his house took some of his clothes and an old knife; that the said knife and clothes did not contain any blood stains of the deceased or anyone else and that the application is discriminative in seeking orders to obtain blood samples from him only and not any other of his co accused; that the applicant has not attached any document from the Government Chemist analysis requesting for his blood samples as alleged.

The instant application has been brought pursuant to **Sections 118 and 121(1) of the Criminal Procedure Code CAP 75 of the Laws of Kenya**. The said Sections provides as follows:

“where it is proved on oath to a court or magistrate that anything upon, with or in respect of which an offence has been committed, or anything which is necessary for the conduct of an investigation into an offence, is, or is reasonably suspected to be, in any place, building, ship, aircraft, vehicle, box or receptacle, the court or a magistrate may by written warrant (called a search warrant) authorize a police officer or a person named in the search warrant to search the place, building, ship, aircraft, vehicle, box or receptacle (which shall be named or described in the warrant) for that thing and, if the thing be found, to seize it and take it before a court having jurisdiction to be dealt with according to law.”

Section 121 thereof provides as follows:

“when anything is so seized and brought before a court, it may be detained until the conclusion of the case or the investigation, reasonable care being taken for its preservation.”

Clearly, the above two provisions are not applicable to the instant application. The above **Sections 118 to 122 of the Criminal Procedure Code** relates to search warrants whereas in the instant application relates to obtaining blood samples from the accused for analysis by Government Analyst.

The Applicant has invoked the wrong provisions of the law as the procedure laid down. Such eventuality can be dealt with under **Section 122A (1) of the Penal Code CAP 63 of the Laws of Kenya** which reads:

“122A. (1) A police officer of or above the rank of inspector may by order in writing require a person suspected of having committed a serious offence to undergo a DNA sampling procedure if there are reasonable grounds to believe that the procedure might produce evidence tending to confirm or disprove that the suspect committed the alleged offence.”

There are clear provisions under the law to be followed in the instant situation and find no good reason given for ignoring that set down procedure. The application is incompetent and is hereby stuck out.

DATED, SIGNED AND DELIVERED THIS 19TH JULY, 2016.

R.P.V. WENDOH

JUDGE

19/7/2016

PRESENT

Mr. Mulochi for State

Mr. Kaimenyi holding brief for Mr. Nyauchi for Accused

Ibrahim/Peninah, Court Assistant

Accused, Present