



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MALINDI

Criminal Case 10 of 2005

REPUBLIC.....PROSECUTOR

VERSUS

FRANCIS NJUGUNA KIMANI.....ACCUSED

RULING

In the course of his testimony, P.C. Joseph Ngetich was in the process of producing photographs taken of the body of the deceased in this case.

Mr.Muranje for the accused objected arguing that the requirements under Section 78 of the Evidence Act have not been satisfied. For the state, Mr.Ogoti submitted that the pictures were taken by the witness, hence he was competent to produce them.

Section 78 of the Evidence Act provides

“78.(1) In Criminal Proceedings a certificate in the form in the schedule to this Act, given under the hand of an officer appointed by order of the Attorney General for the purpose, who shall have prepared a photographic print or a photographic enlargement from exposed film submitted to him, shall be admissible, together with any photographic prints, photographic enlargements and any other annex referred to therein, and shall be evidence of all facts stated therein”

Before photographs can be produced in a criminal trial as evidence, the same must be accompanied with a certificate issued by the person who processed the film. It must be shown that the person issuing the certificate has been appointed by the Attorney-General. The certificate must state the circumstances under which the film was received and how the film was processed. It will also have a certificate that the film has not been interfered with.

I am aware that witnesses are constantly allowed to produce photographs in contravention of the above strict requirements.

In the instant case, although the witness took the photographs himself at the mortuary, and also personally took the film to the scenes of crime offices in Mombasa, there is no indication as to who processed the film and whether he was gazetted. Similarly there is no certificate in the form of the schedule in the Evidence Act.

For these reasons, the witness is not qualified to produce the photographs.

Orders accordingly.

Dated and delivered this 18th day of January, 2006.

W.OUKO

JUDGE

18.1.06

Coram

W.Ouko, J

Mr.Muranje

Mr.Ogoti

Accused present

Ruling delivered in court.

W.OUKO

JUDGE