



REPUBLIC OF KENYA



**KENYA LAW**  
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**Achola v Republic (Miscellaneous Criminal Application  
E115 of 2025) [2025] KEHC 8823 (KLR) (20 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 8823 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIBERA  
MISCELLANEOUS CRIMINAL APPLICATION E115 OF 2025**

**DR KAVEDZA, J**

**JUNE 20, 2025**

**BETWEEN**

**FRANCIS ODHIAMBO ACHOLA ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The applicant is charged with the offence of defilement of a minor aged 12 years, contrary to Section 8 of the *Sexual Offences Act*, No. 3 of 2006. He has annexed a copy of the charge sheet in support. He now contests the admissibility of DNA evidence obtained from him, alleging that the collection process contravened Section 122A(1)(2)(a–d) of the *Penal Code*.
2. He states that on an unspecified date, one PC Juma approached him at his place of work and directed him to report to Mutuini Police Station, allegedly on instructions from the OCS. Upon arrival, he was informed that the OCS had stepped out but had left a message, which was not disclosed to him. He claims this amounted to an informal arrest.
3. He was then escorted to a police vehicle in which the minor and her mother were already seated. He avers that he was not informed of the purpose of the escort, which he believes infringed his constitutional right to be promptly informed of any action taken against him. Although he assumed he was being taken to court to plead to charges, he was instead taken to Kenyatta National Hospital, where blood samples were taken from him under threat and without his informed consent. Similar samples were taken from the minor.
4. He later discovered the samples were intended for DNA analysis. On 24th September 2024, after taking plea, he requested disclosure of statements and reports. Despite several follow-ups, he has not been provided with a copy of the DNA report by the Office of the Director of Public Prosecutions.



5. I have considered the application, the affidavit in support and the applicable law. For consideration is whether the orders sought should be granted.
6. Upon review of the application, I note that the applicant raises serious concerns relating to the manner in which the DNA evidence was obtained. He alleges procedural impropriety, lack of consent, and infringement of his constitutional rights.
7. This Court is mindful of the principle of judicial hierarchy and the trial court's role in determining evidentiary matters. The applicant contends that the DNA samples were taken without being informed of the purpose, and under circumstances that may amount to coercion. He further states that the prosecution has failed to provide him with the DNA report despite repeated requests.
8. However, the admissibility, relevance, and legality of such evidence are issues to be tested during the trial, where both parties will have an opportunity to present and challenge the evidence.
9. At this stage, no ruling has been made by the lower court on the impugned evidence. Accordingly, this Court cannot make definitive findings on the merits of those claims without usurping the trial court's mandate. The issues raised are best ventilated before the trial court through established procedures under the law.
10. In the premises, the present application is therefore premature and does not warrant the Court's intervention at this stage.

**RULING DATED AND DELIVERED VIRTUALLY THIS 20<sup>TH</sup> DAY OF JUNE 2025.**

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**D. KAVEDZA**

**JUDGE**

