



Syuki v Republic (Criminal Case E011 of 2022) [2025] KEHC 7743 (KLR) (4 June 2025) (Ruling)

Neutral citation: [2025] KEHC 7743 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT EMBU
CRIMINAL CASE E011 OF 2022
RM MWONGO, J
JUNE 4, 2025**

BETWEEN

JOSEPH MUSYOKA SYUKI ACCUSED

AND

REPUBLIC PROSECUTOR

RULING

The Charge

1. The accused person herein faces the charge of Murder contrary to section 203 as read together with section 204 of the *Penal Code*. Particulars of the offence are that on 24th July 2022, at Mathira Village Makima Location, Mbeere Sub - County, within Embu County, the accused person murdered Benedict Nguyo Ndirangu. To this charge, the accused person pleaded not guilty and the plea was entered as such. The prosecution called witnesses in support of its case.

The Objection

2. In the course of hearing the prosecution witnesses, PW9 SSP Isaiah Ngetich took the stand. He stated that he was a gazetted Crime Scene Investigations Officer, pursuant to Gazette Notice No.4562/2003 of 7th July, 2003. He indicated that he was testifying on behalf of the late Cpl. David Kipchumba who was known to him since they worked together at Nairobi Area Crime Scene Investigation from 2001-2003. He sought to produce, as evidence, a report authored by his deceased colleague, accompanied by photographs.
3. The applicant objected to production of the photographs and the corresponding report as evidence on grounds that:
 - a. The photographs were taken by a person who was not a gazetted Scenes of Crime Officer;
 - b. The accompanying certificate of evidence was not there; and



- c. The report does not contain the make and device numbers of the devices used to take the photographs.

Parties' Submissions

4. The respondent submitted that the police officers are mandated under the *National Police Service Act* to conduct crime investigation according to their training. That the crime occurred in a far-flung area that is not immediately served with a trained police photographer and it would have taken unreasonable effort to avail one from another region for purposes of documenting the scene without compromising it.
5. The Prosecutor stated that the photographs were taken by a police officer conducting his duties under section 24 of the *National Police Service Act*. That the witness testified that he took the extra precaution of getting the photographs certified by a scenes of crime officer who is well qualified. It was the respondent's argument that the photographs were taken well within the confines of the law and should be allowed into evidence in accordance with section 48 of the *Evidence Act*.
6. The applicant submitted that if any police officers can take photographs in crime investigation, then it would not have been necessary that those officers be gazetted to perform that function. He relied on section 48 of the *Evidence Act* and stated that this gazettement is what qualifies the police officers to become expert witnesses who can produce the photographs as evidence. He termed the prosecution's explanation as to why a gazetted officer was not present at the scene as a lame excuse.
7. It was his submission that the fact that the photographs were certified by a Crime Scene Investigation officer after they were taken does not make them any more acceptable. He also stated that the device used to take, store and transmit the photographs is unknown. He relied on the case of Republic v Namwenya & another [2022] KEHC 15494 (KLR) and urged the court to exclude the photos from the evidence.

Issue for Determination

8. The issue for determination is whether the objection has merit.

Analysis and Determination

9. The applicant contended that the photographs taken and intended to become part of the prosecution's case were taken by an officer who was not gazetted to perform that function. That the photographs were not accompanied by a certificate acknowledging the make and number of the device used to take store and transmit the photographs.
10. Section 78 of the *Evidence Act* makes it mandatory for a "Certificate of Photographic Print" to be produced alongside the photographs. This certificate is what will make the photographs admissible or otherwise. It provides thus:

“(1) In criminal proceedings a certificate in the form in the First Schedule to this Act, given under the hand of an officer appointed by order of the Director of Public Prosecutions for the purpose, who shall have prepared a photographic print or a photographic enlargement from exposed film or an electronic and digital medium 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.



- (2) The court may presume that the signature to any such certificate is genuine.
- (3) When a certificate is received in evidence under this section the court may, if it thinks fit, summon and examine the person who gave it.” [Emphasis added]

11. The certificate should be in the form prescribed under the First Schedule of the *Evidence Act*. This form requires that its maker enters their gazettement information. The certificate takes the form and bears the details below:

“Certificate As To Photographic Print Or Enlargement

I, of being an officer appointed by the under (Gazette Notice No of .) hereby certify as follows—

1. On the . day of 20 at .
I received in a sealed packet numbered purporting to be signed by exposed photographic film (s) under cover of a letter, No. . dated purporting to be sent by ., requesting that I should process the said film(s) and prepare therefrom photographic print(s) and/or enlargement(s).
- (2) The said letter and packet were each signed and dated by me and are attached hereto as annexes 1 and 2, respectively.
- (3) In pursuance of the said request (I processed) the said film(s) were processed under my supervision and (prepared) therefrom photographic print(s) and/or enlargement(s) (each of) were prepared which I have signed and now attach hereto as annex(es)
- (4) The photographic print(s) and/or enlargement(s) attached hereto as annex(es) is/are as nearly as may be (an) exact reproduction(s) from the exposed film(s) submitted to me as aforesaid and have in no way been retouched, altered or otherwise interfered with in the process of their preparation.

Given at . under my hand this day of , 20

(Signed)”

12. The officer who handled the photographs and intends for them to become part of the evidence should prepare the certificate in the prescribed form. The court, under section 78 of the *Evidence Act*, shall admit the certificate as evidence together with the photographs annexed to the certificate. The certificate which the prosecution intends to produce as PExh3 was prepared by Cpl. David Kipchumba (deceased) and he signed it. It contains the necessary information required under the *Evidence Act*.
13. It is worth noting that section 78 of the *Evidence Act* does not require that the taker of the photographs be gazetted. Rather, it makes it mandatory that the person preparing the certificate be gazetted and that the gazettement information be included in the certificate. The wording of the prescribed form indicates that the maker of the certificate may have received the photographs from another officer who took them at the scene and presented them to a gazetted officer.
14. In its submissions, the prosecution intimated that in some cases, it is difficult to avail a gazetted officer to take the photograph at the crime scene because of the location and that it would take unreasonable effort to avail such an officer. There is also the need to secure the crime scene and process/document



it as quickly as possible. This is why police officers who attend at a scene of crime may end up taking the photographs needed for evidential purposes.

15. Here, the prosecution was aware that the photographs have to be attended to by a gazetted officer, and, in this case, Cpl. David Kipchumba prepared the certificate. He indicates that he received the photographs from PC Amos Kasaya of DCI Mbeere North. To this end, and with this understanding, the certificate of photographic evidence with the photographs as annexures thereto, is admissible as evidence as it complies with the provisions of section 78 of the Evidence Act.
16. The applicant relied on the case of Republic v Namwenya & another (supra) as decided by this court, differently constituted. In that case, the court was moved through a revision to ascertain the correctness, legality and propriety of the findings and orders of the trial court where the government analyst was found to be an incompetent witness for preparing a report before he was gazetted to do so. In that case, the court was guided by section 77 of the Evidence Act and it upheld the finding of the trial court. It was held thus:

“ 16. It is not disputed that the government analyst herein clearly admitted that he was gazetted as an analyst on June 18, 2021 and yet he made the report on August 9, 2019. In the circumstances obtaining, the above section clearly stipulates that before making a document recognizable in court in line with section 77(2), or being considered as a qualified government analyst, then the gazettement of the said officer ought to have preceded the making of the alleged document.

17. From the foregoing, I uphold the determination by the learned magistrate that indeed, the government analyst was an incompetent witness and the report that he prepared and wished to produce was not a legal document as per the law required.”

17. The circumstances in that case are entirely distinct and different from the circumstances herein. In the present case, the certificate of photographic evidence was prepared by an officer who was clearly gazetted to do so. There is no requirement that the information of the device that was used to take the photographs be given in the certificate. It is sufficient that the photographs were received by a gazetted officer who also prepared the report to accompany the photographs.

Conclusions and Disposition

18. In light of the foregoing, the objection lacks merit and is hereby dismissed. The certificate of photographic evidence is hereby admitted as evidence together with the photographs annexed thereto.
19. Orders accordingly.

DELIVERED, DATED AND SIGNED AT EMBU HIGH COURT THIS 4TH DAY OF JUNE, 2025.

R. MWONGO

JUDGE

Delivered in the presence of:

Accused Present in Court

Guantai for Accused

Ms. Nyika for the state



