



**Republic v Otieno (Criminal Case E022 of 2023)
[2024] KEHC 5012 (KLR) (16 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 5012 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT SIAYA
CRIMINAL CASE E022 OF 2023
DO OGEMBO, J
MAY 16, 2024**

BETWEEN

REPUBLIC PROSECUTION

AND

EDWIN WANDERI OTIENO ACCUSED

RULING

1. This court was in the process of taking the evidence of PW4 when the prosecution made an application that the witness may produce various exhibits relating to results of specimens taken during the investigations including DNA samples. Mr. Osala, for the Accused raised an objection to the witness producing the said exhibits. Counsel relied on Section 122 (a) of the [Penal Code](#) on grounds that there is no evidence to show that there was consent nor that the accused consented to his DNA being taken.
2. The prosecution has countered this submissions on the grounds that the said DNA samples were taken from the accused pursuant to a court order issued in Ukwala Misc. Application E025/2023 dated 24/7/2023 and that the witness qualifies to produce the exhibits.
3. I have considered the submissions made herein by both the defence side and the prosecution sides. This application properly falls under Section 122 A of the [Penal Code](#), as opposed to Section 122 (d) as captured in the proceedings. The section provides;

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



4. At Section 122C, the suspect himself may consent to the sample being taken, but such consent must be in writing. This seems to be the basis of this application. That the accused never consented in writing to such samples being taken from him for analysis.
5. It has however turned out that prior to such samples being taken from the accused, an application was made before court, and an order obtained allowing for the sample to be taken. I have perused the order issued by the court in Ukwala Misc. Criminal Application No. E025/2023 on 24/7/2023. At Order 2 of the same, the court ordered;

“Escort Edwin Wanderi Otieno, to Government Chemist, Kisumu for DNA Analysis.”

6. It is therefore clear that the DNA samples taken from the accused, were taken pursuant to a court order. The defence never challenged the said order which stays legal and valid. This objection based on grounds that the accused never consented to such sample being taken from, therefore, lacks any merit. I dismiss it. I order that PW4, being a competent witness may produce the exhibits as urged by the prosecution side. It is so ordered.

DATED, SIGNED AND DELIVERED THIS 16TH DAY OF MAY, 2024.

D. O. OGEMBO

JUDGE

16/5/2024

Court

Read out in Court in presence of the accused, Mr. Osala for accused and Ms. Kerubo for State.

D. O. OGEMBO

JUDGE

16/5/2024

