



**Republic v Njuguna & another (Criminal Case 66 of 2020)
[2024] KEHC 12656 (KLR) (22 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 12656 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL CASE 66 OF 2020
DR KAVEDZA, J
OCTOBER 22, 2024**

BETWEEN

REPUBLIC PROSECUTOR

AND

LUCY WAITHERA NJUGUNA 1ST ACCUSED

JOHN THARI GAKINYA 2ND ACCUSED

RULING

1. This ruling is issued in response to an objection raised by counsel for the defence. During the hearing of the case, the prosecution, through its witness Nicholas Ndegwa (PW15), sought to introduce a Real-Time Gross Settlement (RTGS) document as an exhibit. The defence objected to the production of the aforementioned exhibit.
2. I have duly considered the oral submissions made by Mr. Mulama on behalf of the prosecution, as well as those presented by Mr. Wandungi and Mr. Ochichi for the accused persons.
3. Upon reviewing the record, it is evident that the witness stated he received the cheque from Winston Otieno, a teller at the bank, who in turn had received the cheque from Faith Njambi, an employee of Hari Gakinya & Co. Advocates. Notably, both Faith and Winston were not called as witnesses to testify. Furthermore, the witness (PW15) indicated that after consulting with Maralal and the Headquarters, he was advised not to cash the RTGS. However, the emails that facilitated this communication were not produced by the witness.
4. It is pertinent to note that the witness is not the maker of the document in question. The prosecution has failed to establish a proper legal foundation for why this witness should be permitted to produce the exhibit. As such, there is no legal basis for the witness to produce the exhibit, and the evidence does not fall within any exceptions to the rule under Section 35 of the *Evidence Act*. I am inclined to concur



with the defence counsel's position that PW15, Nicholas Ndegwa, cannot produce the RTGS as an exhibit; he may only mark it for identification.

5. Accordingly, I sustain the objection and hereby overrule the prosecution's request to produce the exhibit.

6. Orders accordingly.

Ruling dated and delivered virtually this 22nd day of October 2024

D. KAVEDZA

JUDGE

In the presence of:

Ms. Maina for the State

Ms. Wanduyi for the Accused persons

Achode/Omwoyo Court Assistants.

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