



**Republic v Makhotsa (Criminal Case E015 of 2023)
[2024] KEHC 16022 (KLR) (13 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 16022 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUNGOMA
CRIMINAL CASE E015 OF 2023
REA OUGO, J
NOVEMBER 13, 2024**

BETWEEN

REPUBLIC PROSECUTION

AND

ASMAN ONSIRO MAKHOTSA ACCUSED

RULING

1. Counsel for the accused seeks to have the words “ Blood Sample” in the post-mortem report dated 6.2.2023 subjected to a handwriting expert, to establish who wrote the said words. Her reason for this request is that the words “ blood sample” are not in the copy of the post-mortem supplied to the defence. It has been submitted that the produced document has not yet been admitted in evidence, as the document is admitted when the court will be writing a ruling or judgment.
2. The prosecution objected to the request by the defence on the basis that it had no legal basis as the post-mortem report had been produced in evidence and that the defence would have a chance to interrogate it through submissions. That the application will cause an unfair and unnecessary delay in concluding the matter.
3. In every criminal trial the accused has a right to a fair trial (see Article 50 (2) (k) of *the Constitution* 2010). In my view, a fair trial includes and is not limited to ensuring that the documents the prosecution is relying on and supplied to the defence must be a true reflection/ copy of the original one. There is no dispute that the words “ Blood Sample” are missing from the copy of the post-mortem supplied to the defence. The issue raised by the defence on the writing “ blood sample” does require interrogation. No prejudice will be caused to the prosecution.
4. I therefore grant the application by the accused that the post-mortem report dated April 6, 2023 and produced as exhibit 5 shall be subjected to a handwriting expert to ascertain if the words “ blood sample” are the same as the other handwriting in the body of the said report. A certified copy shall be



left in the court as the original one is sent to the handwriting expert. In the event, further handwriting samples are required from Pw8, I urge him to do so as soon as possible to enable examination of the writings by the expert to enable him to submit a report to this court on a date to be given in court.

DATED, SIGNED AND DELIVERED AT BUNGOMA ON THIS 13TH DAY OF NOVEMBER 2024.

R. E .OUGO

JUDGE

In the presence of;

Accused - Absent

Miss Wakoli -For the Accused

Miss Kibet -For the Prosecution

Wilkister - C/A

