



**Republic v Njuguna & another (Criminal Case 66 of 2023)
[2024] KEHC 13428 (KLR) (4 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 13428 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL CASE 66 OF 2023
DR KAVEDZA, J
NOVEMBER 4, 2024**

BETWEEN

REPUBLIC PROSECUTION

AND

LUCY WAITHERA NJUGUNA 1ST ACCUSED

JOHN HARI GAKINYA 2ND ACCUSED

RULING

1. This ruling is issued pursuant to an objection raised by Mr. Wandungi and Mr. Ochichi on behalf of the accused regarding the admissibility of a certificate prepared by a witness. They argue that it does not comply with the requirements outlined in sections 106B and 78A of the *Evidence Act*. The witness testified that the order to produce the documents was served to the legal team in Nairobi, which then directed the letter to him.
2. One might wonder why the legal team at headquarters did not request the documents and provide them directly to the investigating officer. Alternatively, why didn't this witness simply scan and email the documents to the investigating officer?
3. First, the headquarters could not have supplied the documents to the investigating officer because they were not the custodians of those documents. Second, the investigating officer had to travel to Maralal to collect the documents from the custodian as part of the investigation. Importantly, the documents were printed and provided to the investigating officer only after a court order was issued. The witness did not arbitrarily print these documents; he did so because he was the branch manager and was authorized to provide such documents to the investigating officer.
4. Having done so, the law then required him to comply with the provisions of section 106B and it is important to note that a certificate is a mere procedural requirement to authenticate the documents that the witness produced. If the certificate was taken short of the prescribed maker of presentation,



which I would call falling short of aesthetics the court can actively adjourn the matter for the witness to print a written certificate that's meets the requirements of the law. Granted the certificate is handwritten but that does not make it mean that it has fallen short of the requirements of the law. In *Peter Ngether Ngari t/a PPN Funeral Services v Standard Group Limited PLC & Another* [2020] eKLR, the court stated that in estimating the weight, if any to be attached to electronic and digital evidence the court is required to consider the following:

- a. The reliability of the manner in which the electronic evidence was generated, stored or communicated.
 - b. The reliability of the manner in which the integrity of the electronic evidence was maintained.
 - c. The manner in which the origination of the electronic evidence was identified.
5. Before me stands a witness, who has spent over an hour explaining how he received and printed the documents for the investigating officer. It is a legal requirement that, once such documents are printed, he must prepare a certificate to authenticate them.
 6. I have examined the certificate, noting that part of it is printed while another part is handwritten. To avoid repetition, the bank has developed a standard certificate format in printed form that can be completed either by typing or handwriting. The law does not specify that the certificate must be entirely typed.
 7. I am convinced that the presence of handwritten elements does not invalidate the certificate hence the certificate clearly meets the legal requirements. The witness, the bank manager, was best positioned to print the documents, and his signature on the certificate affirms its authenticity.
 8. Importantly, the computer used had no defects, and the information printed was correctly entered into the system during data entry. The case of *Peter Ngethe* (*supra*) establishes guidelines relevant to the case, focusing on the reliability of how the evidence was generated, stored, and printed, as well as the identification of the originating person, the witness herein. The current objection should not concern the admissibility of the evidence, but rather its credibility.
 9. I therefore dismiss the objection and order the witness to produce the certificate as he is the maker.
- It is so ordered.

RULING DATED AND DELIVERED THIS 4TH DAY OF NOVEMBER 2024

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D. KAVEDZA

JUDGE

In the presence of:

Gikui for the State

Wanduyi for the 1st accused

Ochichi for the 2nd accused

Achode Court Assistant

