

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MAKUENI

HCCR NO. 18 OF 2018

REPUBLIC.....PROSECUTION

VERSUS

NICHOLAS MUU KITENG'E.....ACCUSED

RULING

1. **Pw10 Sergeant Paul Kiilu** of DCI Makueni scenes of crime section took photos of recovered heads of cattle. As per the certificate before the court, he was appointed as scenes of crime officer vide gazette notice No. 10284 of 6th December, 2006. Mr. Muli for the accused objected to the production of these photos because the certificate by Sgt Paul Kiilu was not in compliance with Section 78, 79 and 106 of the Evidence Act on admissibility of electronic evidence.
2. Mrs. Owenga for the prosecution opposed the objection saying those were issues to be tackled in cross examination since the witness was present in court.
3. I have considered both submissions. The photographs before this court have not been shown to be computer generated to be governed by Section 106 of the Evidence Act. They fall under Section 78 Evidence Act. The witness is the person who took the photos and has done a certificate to that effect. There is no requirement that the certificate must be dated the date of taking the photos.
4. The defence will have an opportunity to cross examine the witness on the issues he is raising about the certificate. He may also submit on issues of law on the subject at an appropriate time.
5. My finding is that the objection is not merited and the photos and certificate shall be produced as exhibits.

DELIVERED, SIGNED & DATED THIS 1ST DAY OF OCTOBER 2019, IN OPEN COURT AT MAKUENI.

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H. I. ONG'UDI

JUDGE