



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NYAHURURU**

**CRIMINAL CASE NO.8 OF 2018**

**REPUBLIC.....PROSECUTOR**

**V E R S U S –**

**SAMUEL WANGURA KAMOTHO.....ACCUSED**

**R U L I N G**

This is an application under Section 78A of the Evidence Act. Ms. Rugut has asked the court to allow the investigating officer who took photographs of the scene to produce them in evidence instead of the scenes of crime officer. The court declined to allow the scenes of crime officer to produce them because he did not indicate in the certificate prepared by him whether or not the envelope which contained the CD containing the photographs was sealed or not, contrary to the provisions of Section 78 of the Evidence Act. However the investigating officer who sent the CD to the scenes of crime is able to tell the court whether or not the photographs before the court are what he took or they have been tampered with.

So far, there is no evidence that the accused will suffer any prejudice if the photographs are produced by the investigating officer.

For the above reason, I do allow the investigations officer who took the photographs to produce them in court as exhibits. It is so ordered.

Dated, Signed and Delivered at NYAHURURU this 14th day of November, 2019.

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R.P.V. Wendoh

JUDGE

**PRESENT:**

Ms. Rugut for State

Ms. Muriithi for accused

Soi – Court Assistant

Accused - present