



**Republic v Odindo alias Johana Otieno Odindo (Criminal Case
12 of 2020) [2024] KEHC 8217 (KLR) (28 June 2024) (Ruling)**

Neutral citation: [2024] KEHC 8217 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
CRIMINAL CASE 12 OF 2020
MS SHARIFF, J
JUNE 28, 2024**

BETWEEN

REPUBLIC PROSECUTION

AND

JOHN OTIENO ODINDO ALIAS JOHANA OTIENO ODINDO ACCUSED

RULING

1. On October 3, 2023 the prosecution called one Policap Lutta Que Principal Government Chemist as PW4 but before this witness could testify, Mr. Bagada Counsel for the defence objected to the production of a report by the Government Chemist on grounds that blood sampleSs were obtained from the accused without his consent contrary to the provisions of Section 122 (c) of the [Penal Code](#) which prescribes for a prior consent.
2. It is further submitted that samples taken from the accused were by the order of the Investigating Officer who is a junior officer yet Section 122 (A) demands that DNA sampling can only be done at the instance of a senior officer above the rank on an Inspector thus:

“ 122 A Senior Police Officer may order DNA sampling procedure on suspect

- (1) A police officer of or above the rank of inspector may by order in writing require a person suspected of having committed a serious offence to undergo a DNA sampling procedure if there are reasonable grounds to believe that the procedure might produce evidence tending to confirm or disprove that the suspect committed the alleged offence”.



3. In this instance no report has been placed before this court yet for it to determine whether any samples at all were taken from the accused person and on whose order. In the circumstances I do agree with the prosecution that this application was prematurely made and same is dismissed.
4. This case shall proceed for hearing on July 4, 2024.

DELIVERED, SIGNED AND DATED AT KISUMU THIS 28TH DAY OF JUNE, 2024.

M. S. SHARIFF

JUDGE

