



REPUBLIC OF KENYA



KENYA LAW
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**Republic v Mwaniki (Criminal Case 37 of 2002)
[2023] KEHC 17787 (KLR) (25 May 2023) (Ruling)**

Neutral citation: [2023] KEHC 17787 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CRIMINAL CASE 37 OF 2002**

**HM NYAGA, J
MAY 25, 2023**

BETWEEN

REPUBLIC PROSECUTOR

AND

JOSEPH MURIUKI MWANIKI ACCUSED

RULING

1. The Accused Joseph Muriuki Mwaniki is charged with the offence of Murder contrary to section 203 as read with section 204 of the *Penal Code*. The particulars of the charge are that on February 28, 1999 at about 8.00p.m at Gatero Kang'a (C) Village in Laikipia District within Rift Valley Province he murdered his mother, Lucy Ngendo Ngatia.
2. The charge was read to the accused on 25th June, 2006 and he pleaded not guilty. The trial however did not commence until 5th June 2006 when PW1 testified. As PW2 was testifying the court realized that the accused was of unstable mind and it adjourned the matter and called for a psychiatrist Report on the Accused's mental status. Dr. Njau a Consultant Psychiatrist at Nakuru Provincial General Hospital conducted mental assessment on accused on November 15, 2006 and found he was not fit to stand trial.
3. Subsequently, several reports dated 13.7.2007, 18.11.2015, 5.1.2016, 31.8.2016, 12.8.2018, 15.4.2019, & 24.1.2020 have been presented before this court. All these reports share the opinion that the accused person is not fit to stand trial.
4. In view of the above reports, it is unlikely that the accused person would ever be fit to stand trial.
5. The issue to be determined therefore is what is the most appropriate action to take in this case?
6. In determining the above issue, I am guided by article 50 of *the Constitution* 2010 which provides for the rights to fair trial of an accused person. For these rights to be realized the accused must understand the trial process and that can only be possible if the accused person is of sound mind.



7. Section 162 of the [Criminal Procedure Code](#) provides for the process that courts should follow in cases where the accused persons are lunatics or are faced with other incapacities that render them incapable of understanding the trial process. It stipulates as follows:
 1. When in the course of a trial or committal proceedings the court has reason to believe that the accused is of unsound mind and consequently incapable of making his defence, it shall inquire into the fact of unsoundness.
 2. If the court is of the opinion that the accused is of unsound mind and consequently incapable of making his defence, it shall postpone further proceedings in the case.
 3. If the case is one in which bail may be taken, the court may release the accused person on sufficient security being given that he will be properly taken care of and prevented from doing injury to himself or to any other person, and for his appearance before the court or such officer as the court may appoint in that behalf.
 4. If the case is one in which bail may not be taken, or if sufficient security is not given, the court shall order that the accused be detained in safe custody in such place and manner as it may think fit, and shall transmit the court record or a certified copy thereof to the Minister for consideration by the President.
 5. Upon consideration of the record the President may by order under his hand addressed to the court direct that the accused be detained in a mental hospital or other suitable place of custody, and the court shall issue a warrant in accordance with that order; and the warrant shall be sufficient authority for the detention of the accused until the President makes a further order in the matter or until the court which found him incapable of making his defence orders him to be brought before it again in the manner provided by sections 163 and 164.
8. The condition the accused suffers from renders him incapable of understanding the trial process and therefore the trial may never continue. Both the Counsel for the accused and the state counsel herein concur that the accused should be admitted to a mental institution. In light of the aforesaid, I find that it would be best to have the accused placed in a safe place where he can get the appropriate medical care as provided under section 162(4) of the [Criminal Procedure Code](#).
9. The resumption of the proceedings and further progress is provided for under section 164 of the [Criminal Procedure Code](#), which state as follows:-
 - “ 164. Whenever a trial is postponed under Section 162 or Section 280, the court may at any time subject to the provisions of section 163, resume trial and require the accused to appear or be brought before the court, whereupon, if the court considers the accused to be still incapable of making his defence, it shall act as if the accused were brought before it for the first time.
10. It follows therefore that, once the Director of Public Prosecution informs the court following compliance with the provisions of section 162 or 280 of the [Criminal Procedure Code](#) that the State wishes to proceed with the case, the court has to take necessary steps to progress the case. Where it emerges to the court that the accused is still incapable of making his defence the court is required to act as if the accused was brought before it for the first time. This means that the court can still order the accused to be taken for mental examination, if the situation justifies such an order.
11. Accordingly I order as follows:



1. The accused to remain under the care management and treatment of Mathare Mental and Teaching Hospital, Nairobi.
2. The proceedings herein be typed and a certified copy of the record be transmitted to the Ministry concerned for consideration by the President.
3. This file will remain open. If the accused person recovers he should be produced before this court for further orders of this court subject to any directions that may be given by the President.

DATED, SIGNED AND DELIVERED NAKURU THIS 25TH DAY OF MAY, 2023.

H. M. NYAGA

JUDGE

In the presence of;

C/A Jeniffer

Ms Murunga for state

Accused absent

Mr. Ooga for accused

