



REPUBLIC OF KENYA



**Mbugua v Republic (Criminal Revision E272 of 2022)
[2023] KEHC 21723 (KLR) (Crim) (14 August 2023) (Ruling)**

Neutral citation: [2023] KEHC 21723 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
CRIMINAL REVISION E272 OF 2022
LN MUTENDE, J
AUGUST 14, 2023**

BETWEEN

GEOFFREY KARIUKI MBUGUA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. Geoffrey Kariuki Mbugua, the Applicant, through the firm of Mboya Wangong'u & Waiyaki advocates, by a letter dated October 28, 2022 seeks to move this court pursuant to section 362 of the [Criminal Procedure Code](#) (CPC).
2. The genesis of the matter is that the applicant was charged in Makadara Criminal Case No 4054 of 2022 with the offence of Obtaining money by false pretence Contrary to Section 313 of the [Penal Code](#). Particulars of the offence being that on diverse dates between June 26, 2006 and February 24, 2022, at Pangani area in Starehe Sub County within Nairobi County, with intent to defraud, he obtained Ksh 750,000 from Meshack Appolo Mwangi by falsely pretending that he was in a position to sale him a plot, a fact he knew or believed to be false or untrue.
3. Upon arraignment, learned Counsel representing accused, Mr Omuganda sought the plea to be deferred on account of mental status. The objection raised was based on an allegation that the accused is suffering from dementia. The argument raised was opposed by the Prosecution. It was urged that the accused had been granted sufficient time to settle the matter. In the result of the argument advanced, the plea was deferred and the accused was granted bond of Ksh 500,000/- with a surety, and, in the alternative, a cash bail of Ksh 200,000/-
4. The applicant presented two (2) Reports following mental assessment which the Prosecution objected to. A further mental assessment was done and it was stated that the applicant was being managed for



dementia to which the Prosecution objected. Another mental assessment was done on October 5, 2022 at Kenyatta National Hospital where it was stated that the applicant was not suffering from any mental disorder. The court adopted that medical Report. However, the applicant sought an opportunity to undergo another mental assessment but the court declined and deferred the plea to November 21, 2022.

5. The contention of the applicant is that the court should have complied with section 162 of the Criminal Procedure Code (CPC) by ascertaining the soundness of mind and postponed the proceedings as the applicant was unable to participate in proceedings. In this regard reliance was placed on the case of *Christopher Ochieng Vs Republic (2018) eKLR*; *Charles Mwangi Muraya Vs Republic (2001) eKLR* and *Lucy Awour Odhiambo Vs Republic (2016) eKLR*
6. That the applicant cannot comprehend and participate in proceedings hence review being sought.
7. The Respondent undertook to file submissions that were not forthcoming.
8. The jurisdiction of revision is enacted under section 362 of the CPC that provides thus:

The High Court may call for and examine the record of any criminal proceedings before any subordinate court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of any such subordinate court.

9. Supervisory jurisdiction of the High Court over the Subordinate Court is limited. It acts where there exist illegalities, irregularities and procedural errors in proceedings. In the instant matter this court has been called upon to examine the propriety of the finding/order of the lower court for noncompliance with Section 162 of the Criminal Procedure Code. This particular provision of the law provides thus:
 - (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.



10. From the reading of the law, it is obvious and trite that a person on trial understands and fully participates in the trial. Depending on the report placed before it by an expert or even by observing the conduct of the person arraigned, the trial magistrate must establish whether the individual is capable of following proceedings and ultimately making a defence.
11. Upon being brought before the court, the applicant through Counsel argued that by virtue of the report they had, the applicant suffered from dementia, therefore, was incapable of taking plea, a fact known to the Investigation Officer. The initial letter was authored by Dr Nelly Kitaze of Aga Khan University Hospital. According to the content of the letter dated August 3, 2022, the applicant had been on treatment for dementia and depression since July 1, 2022. Dementia is a condition characterized by progressive or persistent loss of intellectual functioning. This condition can only fall into the category of a mental illness if the situation is so classified.
12. Despite the fact that the court did not refer to section 162 of the Criminal Procedure Code, it actually acted as provided by the provisions of the law. It deferred the plea to a further date hence postponing proceedings and directed the applicant to be taken for mental assessment. By a report dated August 22, 2022, authored by Dr Olando Milcah, the medical superintendent at Mathari National Teaching and Referral Hospital, the applicant was stated to be suffering from Alzheimer's dementia. Subsequently he was examined by Dr J Jumba, a Consultant Psychiatrist based at Kenyatta National Hospital on August 30, 2022, who opined that he was being managed for amnesia. This had been for the four (4) preceding months.
13. By a report dated October 5, 2022, Dr I Kenyanya, a Senior Medical Specialist in Psychiatry at Kenyatta National Hospital, the applicant was not suffering from a mental disorder and was declared fit to plead. This report was vehemently contested by the applicant.
14. Directions given by the court that the applicant takes plea had a basis, which was the finding of the expert after the applicant underwent treatment over a duration of time. This made the court form the opinion that the applicant's mental fitness to stand trial was no longer a challenge.
15. In the case of *DMM Vs Republic (2016) eKLR*, the accused had a case of insanity during the commission of the offence. He was found fit to plead but later developed complications at the defence stage. He underwent treatment and the final report indicated that he was fit to plead. This resulted to the case concluding where he was convicted and sentenced to serve thirteen (13) years imprisonment.
16. In the case of *Leonard Mwangemi Mwayaile Vs Republic, Criminal Appeal No 112 of 2017* where the Court of Appeal had to deal with similar facts as in this case, a psychiatrist expressed the view that the appellant, who had a history of mental instability, was 'fit to plead' as a result of which the appellant was tried and convicted of murder. On appeal the Court of Appeal took into account the previous and supervening mental condition of the appellant and found that there was doubt whether he was truly sane. The court also emphasized that the purpose of the provisions of the Criminal Procedure Code detailing the procedure for dealing with an accused person who is insane is to avoid the likelihood of sentencing a person with a mental disorder. In that case, the appellant was found to suffer from psychosis, schizophrenia and bipolar disorder.
17. From the foregoing, what transpired in the lower court was not an irregularity since the court complied with what is provided for in law. There would be no prejudice in the applicant taking plea. In case of any mental issue cropping up during trial, Section 162 of the CPC will come into play and compliance be called for by the applicant being re-assessed.
18. In the result, the application fails and is dismissed.



19. It is ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY THROUGH MICROSOFT TEAMS AT
NAIROBI, THIS 14TH DAY OF AUGUST, 2023.**

L. N. MUTENDE

JUDGE

IN THE PRESENCE OF:

Mr. Omuganda for Applicant

Mr. Mutuma for ODPP

Court Assistant - Mutai

