

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

CRIMINAL CASE NO. 61 OF 2017

REPUBLIC.....PROSECUTOR

VERSUS

FM.....ACCUSED

RULING

1. The question of the mental health of the accused in this matter is not new. Way back on the 22/11/2017 when the matter was placed before the judge for directions and plea then had been filed a medical report which said the accused was not fit to plead and the counsel for the accused informed the court that she was unable to communicate with the accused and requested that the accused be afforded medical attention. The prosecution then applied that the accused be committed to Mathare Mental Hospital for treatment and then did commit him for such treatment with an order that a medical report be filed in court within 60 days.
2. The next time the matter was in court was on the 4/6/2018 when the records say the accused was mute, not out of malice, and once again an order was made that a medical report from Mathare Mental Hospital be filed in court by 6/6/2018. That order notwithstanding no report was filed till the 4/8/2021 when the prosecutor informed the court that he had received a report that the accused was not fit to plead.
3. He thus applied that the court makes a report and transmits the certified copies of proceedings to the Cabinet Secretary responsible for correctional services for his action pursuant to the provisions of section 162(4) of the Act.
4. I have read the record, and I entertain no doubt that since the matter was lodged in court no meaningful steps have been taken in it owing to the mental status of the accused. Not even a plea has been taken for the last four years due to the condition Doctor Mwikamba Andrea, described in his report dated 31/8/2017 as “*mental disorder with catatonic features which made him unfit to plead.*”
5. Based on the history of the matter and clear indication that the accused is of unsound mind and unable to plead, I do order that the accused be committed to Mathare Mental Hospital and continue to be detained and committed there pending action by the president pursuant to Section 162(5) of the Act. I direct that the proceedings herein be typed, certified then transmitted to the Minister for the time being responsible for correctional services, prisons department, for President’s consideration.

DATED, SIGNED AND DELIVERED AT MERU VIRTUALLY, VIA MICROSOFT TEAMS THIS 10TH AUGUST, 2021

Patrick J.O Otieno

Judge

In presence of

Maina for the state

No appearance for the defence.

Patrick J.O Otieno

Judge