



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL CASE NO. 31 OF 2012

Lesit, J.

REPUBLIC.....PROSECUTION

VERSUS

PKI.....ACCUSED

RULING

1. The accused was convicted of Murder contrary to **section 203** as read with **section 204** of the **Penal Code**. The court entered a special finding of guilty but insane under **section 166 (1)** of the **Criminal Procedure Code**.
2. I have considered that the prosecution is treating the accused as a first offender.
3. The accused was arraigned in court for the very first time on 19th April, 2012. During that period pending his trial, the accused remained in custody throughout his trial.
4. Mr. Tunya, Learned Defence Counsel in mitigation urged the court to take the following factors into consideration.
 - a) That the accused was aged 57 years old
 - b) That he was in custody throughout his trial.
 - c) That the accused was remorseful for the offence and regrets what happened to his own daughter
 - d) That he still gets mental problems
 - e) That he is sickly being HIV+, Diabetic and Hypertensive
 - f) That his children are under the care of his mother who is over 72 years old
- 5 I have considered the mitigation by the defence counsel.
6. The accused was diagnosed with Psychotic disorder and that is the reason this trial took so long. He was admitted several times between 2012 and 2017. On 30th January 2013 the accused escaped from Mathare hospital and was re-arrested on 31st October, 2013 where he continued his medication for mental illness among other medical issues he had.
10. On 22nd April, 2015 pursuant to a court order, a three- member Board consisting of three Consultant Psychiatrists was formed to assess the mental status of the accused. A report dated 22nd April, 2015 indicated that the accused was suffering from Psychotic disorder possibly secondary to Retroviral Disease, Diabetes Mellitus and Hypertension.
11. The final report from Mathare Hospital dated 2nd November, 2017 stated that the accused had recovered and was fit to plead.
12. After hearing the case, the court entered a special finding under **section 166(1)** of the **Criminal Procedure Code** to the effect that the accused was guilty but insane. Having entered that special finding as provided under **section 166(2)** this court is required to report the case for the order of the President at the same time to order for the accused to be kept in custody.

13. Accordingly, I order

i). That the accused be Detained at the Pleasure of the President.

ii). I further order that the proceedings, judgement and order of this court be typed and certified and the same be placed before the Cabinet Secretary, Ministry for Interior and National Coordination, which is the Ministry in charge of Prisons, for reporting to the President for his consideration, as provided under section 166(2) of the Criminal Procedure Code.

The accused has a right of appeal against the conviction and sentence.

DATED AT NAIROBI THIS 28TH DAY OF MARCH, 2019.

LESIT, J

JUDGE