



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MAKUENI
HC CR. REV. NO. 1 OF 2018
IN THE MATTER OF KILUNGU MAGISTRATE'S COURT
CRIMINAL CASE NO. 604 OF 2015

REPUBLIC.....PROSECUTION

VERSUS

WMM.....ACCUSED

RULING

1. The accused herein was charged with an offence of destroying crops of a cultivated produce contrary to section 334 (a) of the Penal Code.
2. Particulars being that on 24/10/2015 at [particulars withheld] Village, Kikoko Location in Kilungu Sub-county within Makeni County, willfully and unlawfully destroyed seriously crop of Cassava and Banana under cultivation, the property of JOHN KIETI NGIKI.
3. He pleaded not guilty on 02/11/2015 and was released on cash bail of Kshs. 30,000/-.
4. The prosecution requested for the accused to be taken for mental check up and the court made order to the same effect.
5. On 04/11/2015, a report was forwarded to the court indicating that the accused had conditions known as Schizo-affective disorder characterized by hallucinations, delusions, and fluctuations in moods.
6. The doctor recommended him to be referred to inpatient treatment at a secure mental health facility such as Mathare hospital, Nairobi.
7. Even before the medical report was presented to the court, a hearing date was fixed on 02/12/2015.
8. On 22/12/2015, the court made an order without hearing the accused and ordered him to be remanded to control his use of cannabis and fixed hearing date on 22/12/2015.
9. Come 22/12/2015, the prosecution sought another hearing date to await photos of the damaged crops. The date for hearing was thus fixed on 11/01/2016.
10. The prosecution called 4 witnesses and closed its case.
11. The accused tendered his defence and the court rendered decision on 05/08/2016 where it declared that accused was guilty but insane.
12. The report of 04/11/2015 was relied on to make the above verdict.
13. If the accused was insane on 04/11/2015, then the trial of the period between 04/11/2015 to 05/08/2016 could not stand as the court ought to have applied the provision of S. 162 of CPC Cap 75 L.O.K.
14. The trial court should have relied on provisions of S. 166 CPC to withhold trial awaiting the doctors report and thereafter determine the capability of the accused to understand trial and offer his defence.
15. The court thus finds that there was mistrial and sets aside the entire proceedings.

16. The next question is whether the court should order retrial?

17. The accused has already served or been in custody since when he was arrested on 30/10/2015.

18. The trial court breached accused rights to fair trial and thus taking to account the circumstances of the case.

19. I order that:-

1. The accused be set at liberty forthwith, unless otherwise lawfully held.

SIGNED, DATED AND DELIVERED THIS 19TH DAY OF FEBRUARY, 2018.

C. KARIUKI

JUDGE