



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NAIROBI

HCCRC NO. 104 OF 2013

LESIIT, J

REPUBLIC.....PROSECUTOR

VERSUS

GEOFREY WANJALA WECHULE.....ACCUSED

RULING

1. The accused person through his advocate made application to arrest judgment under **section 324** of the **Criminal Procedure Code** which I have considered. This is after the court heard the entire case and delivered the judgement in which the accused person is convicted of murder under **section 203** as read with **section 204 Penal Code**.

2. The accused person argued the grounds that he was advancing to arrest judgment in this case. Mr. Ochako for the accused person urged that judgement should be arrested on the grounds that the evidence of PW7, the Doctor who gave evidence on mental examination of the accused was not complete. Mr. Ochako urged that the accused person wished to have the mental examination on him repeated on the grounds that the evidence of PW7 was not conclusive. He urged that the State had applied that the accused person be examined afresh which was not done.

3. It was the submissions of Mr. Ochako that the judgement on this case was based on the evidence of PW7 which evidence was not conclusive. The other reason advanced by Mr. Ochako is that the accused person wished to have the arresting officer to whom he surrendered himself called as a witness. Mr. Ochako urged that it was the contention of the defence that had the evidence referred to in his submission been adduced before this court, the court would not have arrived at the same conclusion that it has.

4. Ms Ndamu was representing the prosecution at the time these submissions were made did not make any response to the application by the defence.

5. I have perused the record of the proceedings in this case. I see from the record that the prosecution made an application on the 29th September, 2015 seeking to have the mental status of the accused repeated a third time. This application was made after Dr. Georgina Kamunge a Consultant Psychiatrist testified in this case and produced the Mental Assessment Report on the accused person which she prepared after carrying out a mental examination on the accused person. Her Report was P.Exh.5. PW7 told the court that before preparing that Report she interviewed the accused person and also evaluated the information from two people closely related to the accused. These were Julius Wechuli the father of the accused and Violet Nawire the daughter of the accused person on the accused history and his own

conducts. It was the view of Mr. Konga, the Learned Prosecution Counsel who was prosecuting the case at the time that the report of the Consultant Psychiatrist was inconclusive as to the accused mental history.

6. Mr. Ochako for the accused person vehemently opposed the application for a further mental assessment of the accused stating that the Report, P.Exh.5 was conclusive and that it was unnecessary to subject the accused to another examination arguing that his client's rights must be preserved.

7. After this application by the State, the court made an order for a further Mental Assessment of the accused person on the grounds that no prejudice will be suffered by the accused person if a further Mental Assessment were carried out. This was however not done.

8. I have considered the application by the defence. This is clearly an afterthought since the defence was opposed to any further Mental Assessment of the accused. Furthermore, the Report of PW7, the Consultant Psychiatrist was conclusive and detailed. It was made by a fully qualified Medical Practitioner after the examination not only of the accused person but also of his family members who gave the history of his condition and his general behaviour immediately before this offence was committed.

9. I find that no prejudice was suffered by the accused when no further Mental Assessment was carried on him. In any case he was opposed in it. They raise grounds for appeal which should be argued at the appellate court.

10. Secondly, arrest of judgment is made with the intention to stop further proceedings to enable a party take up an issue before the appellate court. This is usually made where the trial court had no jurisdiction to entertain the case from the onset or in the course of the trial, after an amendment to the charge or for some other reason the court ceases to have jurisdiction.

11. That has not been the case here. The information before court was not amended at any stage of the proceedings. The court's jurisdiction has not been compromised at any stage of the proceedings for any reason. The reasons advanced by the accused to arrest judgment should form grounds of appeal in the appellate court. They do not meet the requirements of arresting judgment under **section 324** of the **Criminal Procedure Code**.

12. Further to that, under **Article 165(3)** of the Constitution of **Kenya**, the High Court has unlimited original jurisdiction in all criminal matters. The accused herein cannot allege otherwise.

13. I find the application has no merit and is therefore dismissed.

DATED AT NAIROBI THIS 27TH DAY OF APRIL, 2017.

LESIIT, J

JUDGE