



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
CRIMINAL CASE NO. 85 OF 2010

REPUBLICPROSECUTOR

VERSUS

ALI BILAL HAMAN.....ACCUSED

RULING

1. The accused, Mr. Ali Bilal Haman is herein charged with murder contrary to **section 203** as read with **section 204** of the **Penal Code**. The particulars of the charge are that on the 23rd day of October 2010. At Konaramanda Village, Mulango Location, Tana River district within Hola county he murdered Abdi Boru Mohammed
2. The accused person has never taken plea since his time of arrest because he was found not fit to plead by Dr. J.M Mburu a Consultant Psychiatrist at Mathari hospital after he conducted mental assessment on him on 1st November 2010. He was found to have epileptic psychosis and needed treatment before standing trial. Consequently the court ordered the accused to be detained at Mathare Mental Hospital for three months so as to facilitate his treatment.
3. Subsequently, several reports dated **30/4/2012, 21/12/2012, 18/9/2013, 08/11/2013, 06/05/2014, 23/12/2015, 18/6/2015, 23/2/2015 and 11/03/2016** have been presented before this court. All these reports share the opinion that the accused person is not fit to plead and stand trial. The last report presented to this court dated **11/03/2016** by Dr. Mucheru Wangombe indicated that the accused person was unlikely to ever be fit to take plea and stand trial. The report went ahead to recommend that the accused would benefit from leniency.
4. On the basis of Dr. Mucheru's report dated 11/03/2016, the court ordered that the Director of Public Prosecution to consider the case along the lines that had been suggested by Dr. Mucheru. Ms. Wafula for the state reported that the D.P.P would wish to proceed under **section 161(4)** of the **Criminal Procedure Code**. They sought to have the accused detained in safe custody and the record to be presented to the Cabinet Secretary Ministry of Interior Affairs and Coordination for consideration by the President. Mr. Masara for the accused person raised no objection.
5. The issue that needs to be determined is: What is the most appropriate action to take in this case where it has been determined that:
 - i. Accused person has not taken plea due to an ailment that has impaired his mental capacity

ii. The accused person is unlikely to ever be fit to take plea or stand trial.

6. In determining the afore-mentioned issue I am guided by **Article 50 of the Constitution 2010** which provides for the rights to fair trial of an accused person. Amongst other rights under that Article the accused has a right to be informed of the charge that he/she is facing and be equally accorded sufficient details to answer it. He has a right to be able to be informed in advance of the evidence that will be tendered against him and be accorded an opportunity to challenge that evidence and to adduce evidence. For this rights to be realized the accused must understand the proceedings and be able to instruct his advocate. That can only be possible if the accused person is of sound mind and can understand the trial process.

7. **Section 162 of the Criminal Procedure Code** provides for the process that courts should follow in cases where the accused persons are lunatics or are faced with other incapacities that render them incapable of understanding the trial process. It stipulates as follows:

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.

8. The condition of the accused is that he cannot understand the charge and is incapable of understanding the trial process whatsoever. This is a condition that may never get better going by the findings of Dr. Mucheru Wang'ombe the Consultant Psychiatrist who last examined the accused person. The accused person is not fit to take plea and therefore the trial process may never take off. In light of the afore-mentioned I find that it would be best to have the accused placed in a safe place where he can get the appropriate medical care as provided under **section 162(4)** of the **Criminal Procedure Code**. I know that the accused person is currently admitted at Mathare Mental and Teaching hospital.

Accordingly I order as follows:

1. The accused remains under the care management and treatment of Mathare Mental and Teaching Hospital.

2. The proceedings herein be typed and a certified copy of the record be transmitted to the Ministry concerned for consideration by the President

3. This file will remain open. If the accused person recovers he should be produced before this court for further orders of this court subject to any directions that may be given by the President.

SIGNED & DELIVERED AT NAIROBI THIS 21ST JULY, 2016.

LESIIT, J.

JUDGE