

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

CRIMINAL CASE NO. 22 OF 2003

REPUBLIC.....PROSECUTOR

VERSUS

RICHARD MAINA NDIRANGU.....ACCUSED

RULING

Richard Maina Ndirangu, is before this Court to face a charge of murder contrary to *Section 203* as read with *Section 204* of the Penal Code. The particulars of the charge are that on the 20th day of October 1998, at Kiangoma Village in Nyeri District of Central Province, it is alleged that he murdered Douglas Ndirangu Macharia.

The accused person has never taken plea since the time of arrest because he was found by the Provincial Psychiatrist to be of unsound mind. On the 17th day of July, 2003, this Court committed the accused person to Mathare Mental Hospital for treatment under *Section 162 (4)* of the Criminal Procedure code. On 8th December 2009, this Court was presented with another Psychiatrist report dated 19th November 2009 showing that the Accused suffers from chronic mental illness known in medical circles as paranoid schizophrenia. This Court then ordered the accused person to continue with treatment. On 27th May 2010, this Court directed the Provincial Psychiatrist to prepare another mental assessment report on the accused person. A report dated 28th June 2010 was presented to this Court indicating that the accused person was still suffering from the same ailment. A recommendation was made to have the accused person continue with treatment.

Mr. Macharia, learned advocate for the Accused has urged this Court to issue an order to commit the accused to a mental Hospital for treatment and care under *Sections 162 and 280* of the Criminal Procedure Code. Miss Ngalyuka, learned Senior State Counsel, was in agreement with Mr. Waweru. It is not in dispute that the accused person has been suffering from the current mental illness as far back as 1995. He has been in custody since 1998 and it would appear he would take long before he fully recovers. It is a matter of common notoriety that the prison where the accused is held does not have the facilities that can address the mental challenges facing the accused. Under *Sections 162 and 280* of the Criminal Procedure Code, the law provides what should be done in such cases. Under *Section 162(4)* of the Criminal Procedure Code, it is clearly expressed that where *inter alia* bail may not be taken or if sufficient security is not given, the Court shall order the accused person to be detained in safe custody in such a place and manner as it may think fit. The law also enjoined the Court to transmit the court proceedings certified copy thereof to the Minister for consideration by the President. After a careful consideration of the matter, I have come to the conclusion that it is necessary in the circumstances of this case to postpone the hearing or proceedings of this case pending the report of the President under *Section 162(4)* and *Section 280(2)* of His Excellency the Criminal Procedure Code. I direct that the accused person be detained in safe custody at the G.K. Prison with the necessary facilities that can address the challenges facing the accused. I further direct the prison authorities to take the accused person for examination and treatment for his ailment. I also order that certified copies of these proceedings be transmitted to the relevant Minister for onward transmission to His Excellency the President for his consideration under *Sections 162(4)* and *280(2)* of the Criminal Procedure Code.

Dated and delivered at Nyeri this 22nd day of November 2011.

J. K. SERGON
JUDGE

In open court in the presence of Mr. Waweru for the accused and Miss Ngalyuka for the State.