

REPUBLIC.....PROSECUTOR

V E R S U S

FRANCIS MWENDA.....ACCUSED

CRIMINAL LAW AND CRIMINAL PROCEDURE

- Criminal law – insanity – defence of – defense raised by accused- on whom the burden of proving insanity rests – standard of proof – Criminal Procedure Code Cap 75, Laws of Kenya, Section 166(1)

J U D G M E N T

Section 166(1) of the Criminal Procedure Code (Cap 75, Laws of Kenya) provides:-

“166 (1) where an act or omission is charged against a person as an offence and it is given in evidence on the trial of that person for that offence that he was insane so as not be responsible for the acts or omissions made, then if it appears to the court before which the person is tried that he did the act or made the omission charged but was insane at the time he did or made it, the court shall make a special finding to the effect that the accused was guilty of the act or omission charged but was insane when he did the act or made the omission.”

In this case the deceased was a sister to the accused. The accused had mental problems since childhood. On 22.01.2004 at about 2.00 p.m. the deceased was on her way from the shamba (farm) when she met with the accused carrying a panga. The two chatted briefly but for unknown reasons started to quarrel which degenerated into a fight. The accused cut the deceased all over the body which was later removed to Meru General Hospital. A postmortem was carried out and it was established that death was due to multiple cut wounds involving the head and the neck. The post mortem report which makes gruesome reading was produced by the prosecution as Pexh1.

The accused was arrested, charged with murder and this charge was reduced to manslaughter on the date of his plea as he was found insane at the time he committed the offence.

As stated above, the injuries inflicted by the accused upon his sister, the deceased can only have come from a person with a diseased mind. He literally chopped the deceased in a manner some people would kill a dangerous serpent, and not another human being. The accused inflicted upon such severe injuries upon the neck and head of the deceased, that the spinal cord was severed, cervical vertebrae were crashed, carotid arteries and jugular veins within the cardio – vascular system were severed, and so was the respiratory system where the upper airway, nasal cartilages, the larynx and trachea were all severed. It can only be described as the handwork of an insane mind.

There is no doubt that the accused in this case was guilty of the killing of the deceased, Jane Gacheri Chabari his sister as charged, but was insane at the time when he committed the act.

Consequently by virtue of Section 166(2) of the Criminal Procedure Code, the court will report this finding for the orders of H.E. the President. In the meanwhile I order that the accused be detained in Kamiti Prison, at which prison such further specialist treatment in custody as is necessary may be arranged.

I hasten to add that the President’s power under section 166(1) above is delegated and now exercised by the Minister and the Permanent Secretary of the Ministry for the time being responsible for prisons. A report shall consequently be made to the said minister who is now the Vice President and to his

Permanent Secretary.

There shall be orders accordingly.

Dated, signed delivered at Meru this 16th day of October 2009

M. J. ANYARA EMUKULE

JUDGE