



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MACHAKOS**

**Criminal Case 43 of 2003**

**REPUBLIC**

**VERSUS**

**MARGRET NGUNYA MAKAU**

**RULING**

1. On 17.1.2007, *Sitati, J.* ordered this case to proceed under section 166 of the Criminal Procedure Code which provide as follows:-

***“(1) Where an act or omission is charged against a person as an offence, and it is given in evidence on the trial of the person for that offence that he was insane so as not to be responsible for its act or omissions at the time when the act was done or the omission 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.”***

2. On the same day, PW1, Eunice Wanza Musembi testified and hearing adjourned to 28.2.2007. Thereafter, on every other occasion when it was listed for hearing, no witness was availed by the Republic and finally on 2.7.2007, a year and behalf after the trial commenced, I granted the Republic the last adjournment in the matter and on 30.9.2008, Mr. Wango’ndu for the Attorney General closed his case as he had no other witness to call. I set the case for submissions on 29.10.2008 and on that day , Mr. Omirera, Principal State Counsel applied for “***setting aside***” of the order closing the case for the Republic to enable the psychiatrist who examined the accused person to testify.

3. Mrs Mutua for the accused person stated that the trial had been dragging for far too long and there was sufficient evidence on record for the court to determine whether the accused person was insane at the time the offence was allegedly committed.

4. I have elsewhere above set out section 166 of the Criminal Procedure Code and I have considered the rival submissions on whether I should or I should not re-open the case for the Republic. My humble view is as follows;-

5. Without medical evidence as to the mental state of the accused at the time the offence was committed, it may not be possible to make any proper finding under section 166 aforesaid and all prior proceedings would be in vain. However, even as I make an order that the state should reopen its case with a view to calling a Psychiatrist, it cannot be that the case should be dragged ad infinitum as is apparent.

6. Orders accordingly.

Dated and delivered at Machakos this **14<sup>th</sup>** day of **November 2008**.

**Isaac Lenaola**

**Judge**

In the presence of: Mr. Omirera for Republic

**Isaac Lenaola**

**Judge**