



REPUBLIC OF KENYA



**KENYA LAW**  
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**KM v Republic (Criminal Appeal E047 of 2022)  
[2025] KEHC 442 (KLR) (23 January 2025) (Judgment)**

Neutral citation: [2025] KEHC 442 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MACHAKOS  
CRIMINAL APPEAL E047 OF 2022  
MW MUIGAI, J  
JANUARY 23, 2025**

**BETWEEN**

**KM ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being an Appeal against the Judgment of Hon. A. Nyoike (PM) at the Machakos  
Chief Magistrate's Court in Criminal S. O. No. E049 of 2022 delivered on 7/10/2022)*

**JUDGMENT**

1. On 16/5/2024 the Court delivered judgment as follows:
  - a. Dr. Jeniffer Njoki consultant Psychiatrist at Machakos Level Five who has been attending to the Appellant prepare a conclusive report outlining how the Appellant can be handled and/or treated, the period treatment will be needed and the appropriate remedy for the condition.
  - b. The accused be detained in safe custody in Mathari hospital where he will undergo treatment pending medical report by the Dr. Jeniffer Njoki a consultant Psychiatrist.
  - c. The Appellant be presented in court within 45 days of this Judgment for further orders considering the above latest Report on release and to where of the patient/Appellant.
  - d. Further Mention 18/07/2024 for orders based on the Report.
2. On 18/9/2024 the Court ordered that the conclusive/comprehensive report on medical assessment from Mathari Hospital to be availed.

Deputy Registrar Machakos High Court to follow up with the Court orders. Further mention on 16/10/2024.



3. On 29/10/2024, the Court –On 18/9/2024 a conclusive report on the mental status of the Appellant was sought The matter is left to ODPP to enquire form Mathari Hospital on the medical status of the Accused person.
4. Further mention on 29/10/2024.  
On 29/10/2024 the ODPP confirmed letter from Machakos Prison that the Appellant was in Mathare Hospital.
5. On 17/12/2024 A letter from Mathare hospital was received dated 28/10/2024.
6. On 19/12/2024 ODPP submitted that following Court Judgment of 16/5/2024 that sought a Report from both Machakos Level 5 Hospital on treatment and Way forward and from Mathare Referral Hospital on the Appellant’s mental status.
7. The ODPP submitted that medical assessment conducted on 2/8/2023 the appellant was found to have intellectual disability. On 9/4/2023, the Report by Machakos Level 4 and wasreferred to Mathare Hospital and the Report is that the Appellant is now ok and can make his Defense.
8. Since it is not known if the Appellant was ok during trial or not now that he is better, the matter proceeds for retrial so that all parties’ victim and applicant rights are safeguarded under Article 50 of the Constitution.
9. This Court delivered judgment on 16/3/2023 on bail/bond Application and judgment on Appeal of16/5/2024 that necessitated further medical /mental examination/assessment of the Appellant.
10. The Court noted the following with concern;
  - a. The proceedings of 19/12/024 were in the absence of the Appellant he was not produced physically or virtually in Court and no explanation was given. He therefore was not part of proceedings to confirm if and when he went to Mathare Referral Hospital, the treatment and when he was taken back to Kamiti Prison and how he felt.
  - b. Secondly, compared to Medical/Mental Assessment Reports by Dr Jennifer Njoki Consultant Psychiatrist at Machakos Level 5 Hospital of the Appellant and Reports of 2/8/2023 & 9/11/2023 are quite detailed on observations/findings on Appellant’s mental status. The Photocopy Report from Mathare Referral Hospital is scanty on examination assessment and treatment of the Appellant and furthermore it is signed by unidentified/unknown doctor on behalf of Dr Rajab. The Report merely, states;

I hereby certify that the above person committed to my care by Machakos High Court 16/5/2024. In my opinion has now become capable of making his/her Defense.
11. This Court is inclined to rely on the 2 extensive detailed reports by Dr Jennifer Njoki unless and until a detailed Report is received from mathare Mental Hospital and is signed by the Author and presented to Court.
12. The Court relies on the findings of Dr Jennifer Njoki that the Appellant has intellectual disability which is a neurodevelopmental disorder which started in childhood which impairs his social skills, judgment, decision making and other cognitive function. It cannot be treated.
13. Similarly, although plea taking by Trial Court was in conformity with the law,Adan v Republic [1973] EA 445; Section 207(1) and (2) CAP 75 of the Criminal Procedure Code; the State of mind mens



rea is difficult to decipher/confirm as required under Section 12 of the Penal Code. Therefore, the conviction and sentence is not safe and ought to be set aside to allow re-trial and both victim's and Appellant's rights are protected under Article 50 of the Constitution.

### **Disposition**

1. The Appeal succeeds on medical grounds, medical /mental assessment of Appellant that it is probable during plea-taking he was mentally challenged.
2. Therefore, conviction on his own plea of guilt and subsequent life imprisonment sentence is set aside on condition
3. The matter is returned to Chief Magistrate's Court Machakos for Re-trial- plea taking and bail bond consideration during trial
4. The period served in custody and/or sentence shall be considered if and when subsequent sentence is meted out and computed.
5. The Court file & Judgment returned to Machakos High Court /Deputy Registrar Machakos High Court.

**JUDGMENT DELIVERED SIGNED & DATED IN OPEN COURT ON 23/1/2025 IN MACHAKOS HIGH COURT. ( VIRTUAL/PHYSICAL CONFERENCE)**

**M.W.MUIGAI**

**JUDGE**

