



REPUBLIC OF KENYA



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**DK v Republic (Criminal Case 38 of 2020)  
[2025] KEHC 2346 (KLR) (13 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 2346 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MERU  
CRIMINAL CASE 38 OF 2020  
EM MURIITHI, J  
FEBRUARY 13, 2025**

**BETWEEN**

**DK ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. By a Notice of Motion dated 8/11/2024 pursuant to Sections 162 (2), 162(3) and 163 of the [Criminal Procedure Code](#), Articles 19, 28, 50 and 54 of [the Constitution](#), the Applicant seeks:
  1. This Honorable Court be pleased to postpone further proceedings in this case.
  2. The Honorable court be pleased to release the Applicant on condition that in the event that he is fit to take plea, the trial shall resume.
  3. This Honorable court be pleased to commit the Applicant to the care of his father who will take care of him and prevent him from harming himself or anyone else.
  4. Costs be provided for.
2. The application is premised on the grounds that the Applicant suffers from acute Schizophrenia and has been undergoing treatment. He further suffers from hypertension and is in dire need of medical attention. According to the medical examinations conducted by the Psychiatrists, he does not understand the nature of the charges he is facing thus unfit to stand trial. He needs regular follow up with a mental health specialist to ensure that he gets proper mental care and assessment. It will be in the best interests of justice to place him under the care of his father who will take proper care of him and prevent him from harming himself or anybody else.
3. In his affidavit in support of the application, the Applicant's father, MMM avers that detaining the Applicant at a mental facility for an indefinite period will impact on his social adaptability. The



Applicant has the reasonable accommodation necessary to realize his full potential as a human being and to be treated with dignity and respect, and relies on Republic v JWK (2013) eKLR. He undertakes to present the Applicant before the court to stand trial for the charge of murder, in the event he recovers.

4. The Respondent opposed the application vide a replying affidavit sworn by Masila E. Masila, its Principal Prosecution Counsel on 17/10/2024. He avers that the Applicant has not yet pleaded to the charge of murder in light of the letter dated 10/7/2020 by Dr. Mwikamba Andrea, the Psychiatric Consultant at Meru Teaching and Referral Hospital who found him to be of unsound mind and unfit to plead. Additionally, the Psychiatric Consultant concluded that the Applicant would benefit from admission in a mental hospital. The Applicant's admission to Mathare Hospital was derailed by the hospital's suspension of admissions due to the prevailing Covid 19 outbreak. The Applicant was subsequently admitted to bail and released from custody. The Applicant has since his release been under the care and custody of his father while he still undergoes regular mental assessment checkups at Meru Teaching and Referral Hospital. Dr. Gordon Ambayo, a Psychiatric Consultant in his report dated 12/3/2024 still found the Applicant to be of unsound mind and unlikely to recover. Despite the regular assessment reports dated 10/7/2020, 27/10/2020, 28/11/2023 and 12/3/2024, the Applicant has not had the benefit of being admitted at Mathare Hospital for treatment, thus the inquiry made by the court under section 162 (1) of the [Criminal Procedure Code](#) has not been exhausted. There is no medical report advanced by the Psychiatrist that the Applicant would not benefit from any medication or admission and in the absence of such medical and scientific report that the Applicant's mental disorder called Schizophrenia can never be treated in a mental hospital, he prays that the Applicant be committed back to prison for onward transmission to Mathare Hospital. In light of the aforementioned, he considers the application to be misconceived and prays for its dismissal.

## Submissions

5. The Applicant's counsel urges that committing the Applicant to Mathare Hospital indefinitely without a trial or conviction is tantamount to punitive detention, which undermines the Applicant's constitutional rights to liberty and dignity. He urges that the [Mental Health Act](#) does not mandate the automatic committal of a mentally ill accused person to health facilities, particularly where alternative care arrangements can be made. He urges that the Applicant's familiarity with his guardian and home environment is critical for his mental health, as studies have shown that individuals recovering from Schizophrenia benefit greatly from family based care compared to institutional settings. He urges that the Applicant's institutionalization in a mental health facility will expose him to stigma and impede his psychological and social recovery, as any action seeking to limit the Applicant's liberty must be necessary, proportionate and justifiable under Article 24 of [the Constitution](#). He urges that while Mathare Hospital is a treatment facility, its institutional nature cannot match the rehabilitative benefits of familiar care. He urges that the principle of less restrictive care underpins the [Mental Health Act](#), by advocating for alternative measures before institutionalization. He urges the court to adopt an approach grounded in compassion, dignity and respect for the Applicant's constitutional rights.
6. The Respondent urges that the Applicant has never been under the care, management and treatment of Mathare Mental and Teaching Hospital in accordance with the Consultant Psychiatrist mental assessment report dated 10.7.2020. It urges that the placement and admission of the Applicant in a mental health facility promotes the realization of his rights under Article 43 of [the Constitution](#) as read with Section 3A (1) of the [Mental Health Act](#). It urges that the mental assessment reports have not opined that the suitable mental health care and treatment of the Applicant is to place him under the custody of his father. It urges that it has not been shown that the Applicant can no longer receive any other or further treatment from a mental health institution.



## Analysis and Determination

7. The sole issue for determination is whether the application is merited.
8. Section 162 of the *Criminal Procedure Code* provides 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 the proceedings in the case.
  - (3) If the case is one in which bail may be taken, the court may release the accused on sufficient security being given that he will be properly be 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.”
9. In his initial report dated 10/7/2020, Dr. Mwikamba Andrea, a psychiatrist consultant at Meru Teaching and Referral Hospital established that, “Duncan Kariithi Mbaabu has a mental disorder called schizophrenia. Treatment initiated. He is of unsound mind and not fit to plead. He would benefit from admission into a mental hospital.”
10. On 22/7/2020, the court (Ann Ong’ino J) acceded to an application by the Respondent for the committal of the Applicant to Mathare Teaching and Referral Hospital for treatment. Nevertheless, the Applicant was never so committed to the said institution due to the outbreak of the Covid 19 pandemic.
11. The children’s officer, Mr. Gilbert Mwangi recommended in his report dated 26/9/2020, the Applicant’s admission to bond terms or committal to an institution that could take care of his special needs.
12. In his report dated 27/10/2020, Dr. Gordon Ambayo, a psychiatrist Consultant at Meru Teaching and Referral Hospital opined that, “Duncan Karithi Mbaabu is not mentally fit to stand trial. He has been put on treatment and will be reviewed on 24/11/2020.”
13. In his subsequent report dated 28/11/2023, Dr. Mwikamba Andrea, a psychiatrist Consultant at Meru Teaching and Referral Hospital concluded that, “Duncan Karithi Mbaabu has a mental disorder called Schizophrenia. He has been on treatment with some improvement, but still has residual symptoms. He is currently of unsound mind and not fit to plead. Regular follow up by a mental health specialist is required.”



14. In his further report dated 12/3/2024, Dr. Gordon Ambayo, a psychiatrist Consultant at Meru Teaching and Referral Hospital was of the view that, “Duncan Karithi Mbaabu has a mental disorder called Schizophrenia. He has been on treatment with some improvement, but still has residual symptoms. He is currently of unsound mind and not fit to plead. Regular follow up by a mental health specialist is required. Duncan Kariithi Mbaabu is unlikely to recover and become of sound mind to enable him plead and stand trial.”
15. It is undeniable from all the mental assessment reports by the psychiatric doctors that the Applicant would immensely benefit from institutionalized treatment, where he would be cared for by professionals with a wealth of expertise. The Applicant’s father, who is evidently not medical specialist, does not possess the requisite know how to take care of the Applicant, and in the court’s considered view, the Applicant would be best suited in a mental institution, where he would pose no danger to himself and/or his father.
16. The record is clear that the Applicant has never enjoyed the full benefits of being committed to a mental facility. Article 43 of *the Constitution* bestows upon every person the right to the highest attainable standard of health, which includes the right to health care services, including reproductive health care while Section 3A (1) of the *Mental Health Act* provides that every person has a right to the highest attainable standard of mental health services.
17. Section 3A (3) of the *Mental Health Act* is instrumental that in the provision of mental health care, priority shall be given to community health and outpatient primary mental health care and treatment as opposed to institutionalization of the person with mental illness.
18. In this case, the Applicant has been on follow up outpatient primary mental health care at Meru Teaching and Referral Hospital with little and/or no improvement at all.
19. The court deems it prudent to afford the Applicant institutionalized mental care so that he can optimally realize his aforesated rights under *the Constitution* and the *Mental Health Act*.
20. It is undesirable to have the cloud of prosecution hanging over the Applicant’s head indefinitely on account of his mental instability, when he can derive maximum benefit from institutionalized treatment, so that his trial can be progressed expeditiously to conclusion.

#### **Orders**

21. Accordingly, for the reasons set out above, this court finds the application dated 8/11/2024 to be without merit and it is dismissed.
22. The Accused shall be presented to Mathari Mental Hospital for admission and treatment with period reports every ninety (90) days.

Order accordingly.

**DATED AND DELIVERED THIS 13<sup>TH</sup> DAY OF FEBRUARY, 2025.**

**EDWARD M. MURIITHI**

**JUDGE**

Appearances

Mr. Masila for DPP.

Mr. Kirimi for the Accused.

