



**Republic v JMM (Criminal Case 37 of 2002)
[2025] KEHC 1392 (KLR) (20 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 1392 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CRIMINAL CASE 37 OF 2002
JM NANG'EA, J
FEBRUARY 20, 2025**

BETWEEN

REPUBLIC PROSECUTION

AND

JMM ACCUSED

RULING

1. This is a very long pending case. Contrary to the Prosecution Counsel’s statement on 18th February 2025, hearing of the case in fact commenced on 5th June, 2006 or thereabouts as per the record. The first prosecution witness (Mary W. Kuria) completed her testimony. During the testimony of PW2 (Michael Ngatia), however, the court noted that the accused was mentally unstable and directed that he be examined by a Psychiatrist and the examination report filed.
2. Upon receiving the Psychiatrist Report on 31st July 2007, which opined that the accused was not fit to stand trial, the court directed that he be taken for mental treatment. Since then a positive mental examination report showing that he is fit to undergo trial has not been presented to the court. The latest Psychiatrist’s Report dated 5th February, 2025 opines that the accused is still unfit to plead or stand trial.
3. The Prosecution Counsel suggested that the proceedings be stayed and the accused be referred for mental treatment.
4. The defence Counsel (Mr. Ooga) also urges the court to invoke the Provisions of Section 162 (2) of the *Criminal Procedure Code* to stay the proceedings and send the accused for mental treatment until such a time that he is certified to be capable of standing trial.
5. Indeed D. K. Maraga, Chief Justice (Retired) stayed these proceedings on 9th July, 2009 when it was shown that the accused was mentally unstable. Since then, the accused has not been certified as ready for trial and the Director of Public Prosecutions has not intimated to the court whether or not



the Republic intends to continue with the prosecution as provided in Section 163 of the *Criminal Procedure Code*. It was therefore unnecessary for the accused to be produced in court before compliance with the law as stated. In fact, he ought to be receiving mental treatment in an appropriate medical facility until a decision is made whether or not the prosecution shall continue.

6. These proceedings therefore remain stayed and the accused will not be produced in court until and unless the Director of Public Prosecutions makes his decision in this regard.

J. M. NANG'EA, JUDGE.

RULING DELIVERED THIS 20TH DAY OF FEBRUARY, 2025 IN THE PRESENCE OF:

Ms Sang for the DPP

Mr. Ooga Advocate for the accused

Accused, present

Court Assistant (Jeniffer)

J. M. NANG'EA, JUDGE.

