



REPUBLIC OF KENYA



**Republic v Kiriamunyi (Criminal Case 52 of 2009)
[2025] KEHC 1823 (KLR) (20 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 1823 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CRIMINAL CASE 52 OF 2009
JM NANG'EA, J
FEBRUARY 20, 2025**

BETWEEN

REPUBLIC PROSECUTION

AND

SIRONGA KIRIAMUNYI ACCUSED

RULING

1. The accused herein has never pleaded to the murder charge preferred against him owing to mental incapacity. By ruling of my brother (H. M. Nyaga J) delivered on 19th October 2023, hearing of the case was directed to proceed pursuant to Section 167(b) of the *Criminal Procedure Code*. This enactment allows this court to try a case notwithstanding that the accused does not understand the proceedings.
2. Hearing has never taken place after the court's order for the main reason that the Prosecution cannot procure attendance of their witnesses. It appears that the prosecution is also reluctant to continue with the prosecution in light of the mental incapacity of the accused. On 19th November 2024 the Prosecution Counsel (Ms Sang) indicated that she would seek the Director of Public Prosecutions' (DPP) directions which, unfortunately, have not been given to date. The Prosecution Counsel therefore seems to be at a loss.
3. The Defence Counsel (Mr Gakinya) told the court on 31st October 2024 that the case was in fact terminated on 3rd January 2010. Alternatively, Counsel suggest that the accused be detained in the President's pleasure pursuant to Section 166 of the *Criminal Procedure Code*.
4. I have considered Counsel Submissions and the record of this very old case. It is very unfortunate that the accused has been subjected to such uncertainty this long considering his health status.
5. Contrary to the defence Counsel's Submissions, I am unable to see any proceedings of 3rd January 2010 on the record. I have, however, established that Hon. W. Ouko J (as he then was) did in fact terminate these proceedings on 22nd February 2010, following a Psychiatrist's Report that the accused was unfit



to stand trial. The court directed inter alia that he be taken to Mathari Mental Hospital for treatment. Since then the accused has not been certified ready for trial and the DPP has not communicated his decision to the court as to whether or not the prosecution will continue as per the provisions of Section 163 of the *Criminal Procedure Code*.

6. The proceedings herein therefore stand stayed as per the order of 22nd February 2010. The court's ruling of 19th October, 2023 is reviewed accordingly.
7. The accused should therefore be undergoing mental treatment until such a time that the DPP shall communicate his decision whether or not the prosecution will continue. As the proceedings have been stayed, the accused will not be produced in court until and unless the DPP acts in accordance with the law.

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

J. M. NANG'EA, JUDGE.

Ms Sang for the DPP

Mr Gakinya Advocate for the accused, Absent

Accused, Absent

