



REPUBLIC OF KENYA



**Republic v Mulei (Criminal Case 41 of 2016)
[2025] KEHC 7191 (KLR) (19 May 2025) (Judgment)**

Neutral citation: [2025] KEHC 7191 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MACHAKOS
CRIMINAL CASE 41 OF 2016**

**MW MUIGAI, J
MAY 19, 2025**

BETWEEN

REPUBLIC PROSECUTION

AND

JOHN MALI MULEI ACCUSED

JUDGMENT

1. The accused was charged with the offence of Murder Contrary to Section 203 as read with Section 204 of the [Penal Code](#). The particulars of information are that :
2. John Mali Malei: On the 25th day of October 2016 at Syokimau estate within Mlolongo in Athi River subcounty murdered Florence Mueni Mbuki.
3. The accused pleaded not guilty and the trial commenced on 9/11/2016. The prosecution called 6 witnesses on several dates.

The Prosecution Evidence.

Background

4. The matter was heard by Hon.D.K.Kemei J .
5. The Mental Assessments dated 6th June, 2017 and filed on 7th July 2017 indicated that he is Fit to plead. The Accused person herein took plea on 3/08/2017 whereof after the charges were read out to him in a language that he understood he pleaded Not Guilty. A plea of Not Guilty was entered on his behalf.
6. The Accused person was taken for a fresh mental assessment and a report dated 4th November, 2019 and filed in Court on 26th November, 2019 found the accused person capable of making his defence ODPP.



7. The Accused person was represented by Mr. Kyalo Advocate while the state was represented by Mr. Machogu and later Mr. Mwangera.
8. PW1 Jackson Sila Muthiani told the court that on 25/10/2016 he went to the deceased's house situated at Jambo court in Syokimau to do some repairs but on knocking the gate there was no response, he then called out her name to no avail. He decided to call her number but there was no response. He then peeped through a hole in the gate and saw the accused herein who used to live there. Later, the father to the accused arrived and found him at the gate and directed him and his fellow worker, Robin to jump over the gate so as to have the gate opened. They entered the compound but still the key to the gate could not be located. The father to Mueni invited him into the house where he found the accused herein looking suspicious and the body of the deceased lay on the corridor. The police arrived at the scene and recovered a twisted knife that had been used. He said that the accused's T-shirt had bloodstains and he had a stab wound on the right hand. The police checked accused's bedroom and recovered another bloodstained knife. The accused's shoes were also soaked in blood. The Police interrogated the Accused Person and took the body of deceased away. He said he knew the Accused and he acted abnormally on this day he appeared confused. He did not witness the incident.
9. In cross examination he stated that he had known the accused and his family for three years. He knew that the accused was a university student and three months prior to the incident, the accused started having strange behaviors and PW1 alerted his parents. He said that the accused used to question his parents wealth and suspected that they could have been using jinis to acquire wealth. He said that the accused used to be rude to the deceased and on that day the accused appeared abnormal behavior.
10. PW2, Susan Wanjiru Ngugi who works at the Government Chemist Department in the forensic biology section told the court that they received an exhibit memo from No.75834 PC Moses Muange of Mlolongo police station as follows:-
 - A1- Clothes of accused person – John Mali Mulei which comprised light grey polo T-shirt and light purple polo T-shirt.
 - A2 – Blood sample of the accused person.
 - A3 - shoes (black with white sole) packed in a khaki envelope from accused person.
 - D1 – Blood sample of deceased Florence Mueni Ndambuki.
 - D2 – Clothes of deceased person which comprised a green polo T-shirt packed in a khaki envelope belonging to the deceased.
 - B1 – Cotton wool swab in a khaki envelope indicated to be from bedroom floor.
 - K1 - 3 knives with wooden handles packed in a khaki envelope.
 - K2 – cotton wool swab from the kitchen floor.

She said that the exhibits underwent preliminary analysis and she produced the report on behalf of one Lawrence Kinyua Mukuri on 14/02/2019, a colleague she said she had worked with for 8 years. The report concluded that the DNA profile form (A2) was from unknown male origin, the bloodstains on the cotton wool (D1) 1 pair of shoes (A3) knives K1 (i) and K1(iii) did not generate a DNA profile
11. This Court took over Trial Proceedings on 3/11/2021 and on 8/3/2022 Section 200 CPC read to the Accused person and he opted to have the matter proceed from where the matter had stopped. Proceedings were typed and served to ODPP and Defence.



12. PW.3 James Makau told the court that the accused person is his elder brother and on 25/10/2016, he had breakfast with his father Julius Makau and mother Mueni around 5.30 a.m and set off with his father to school. He said he left the accused in the house with his mother. At 11.46 a.m. the School Accountant/Maths Teacher Mr. Wafula and Mr. Ogolla came told him to pick his things and he boarded the school vehicle, a Probox and was driven home to Syokimau area where he found his father at the gate. The front door was locked and they went to the back door with his father, he found the mother was no more and there was a pool of blood and his brother was in the room walking aimlessly. He said the accused had a deep cut on his hand which he did not leave him with in the morning.
13. He said that as he entered the room he found his mother at the verandah of the back door towards the kitchen and on the ground was a small knife. There were 3 knives were at the scene when he went in with his dad. The accused was looking at him aimlessly and he did not look normal, his shirt had blood and he did not notice. He said the accused has history of mental illness ever since since 2016. He said there were footprints of blood and the accused was taken to the Mlolongo Police Station.
14. Upon cross examination, he said that the accused person was in school at U.O.N – Nairobi University either 2nd or 3rd year. The accused person would disappear from home and he would appear after some time. He said that the accused person bothered people aimlessly. He asks a stranger for something or enters someone’s vehicle and is to be taken somewhere. He said that from 2016 the accused’s behaviour changed; he was not communicating and stayed alone. He was rude to people for no reason and was very rude to the deceased. He said that the accused person told him he did not feel well and sometimes heard voices people speaking to him in the head. His parents sought prayers but soon thereafter the Accused Person returned to his normal ways. The Accused Person was taking medicine. In his opinion was not behaving normally shortly before the incident of the death of their late mother the deceased.
15. PW.4 PC. Arnold Mati told the court that on 25/10/2016 he was at the Mlolongo Police Station when he was called by inspector Gatambia OCS Crime and together with Duty officer Cpl. Mbithi were told to go to Jumbo in Syokimau Area where a case of murder had occurred. He said that when we got there accompanied by the Reportee the owner of the home who reported the case, they got into the compound, they found that the door of the house was opened and inside the corridor near the kitchen there was the body of a woman soaked in blood and lay on the ground facing down. She had stab wounds on the right hand, on the face and on the left side of the ribs and her clothes were also soaked in blood.
16. He said that the door of the kitchen was opened and there was blood on the floor of the kitchen and everything scattered everywhere. There were 2 knives on the table of the kitchen produced Exhibit 3(a) and 3(b). They went to the bedroom where the accused person was and he looked shaken and scared and he was in shock not in normal position/person. In the room we found another knife with blood - silver bent knife – Exhibit 4. His T-shirt had blood. The scenes of crime came and took photographs.
17. Upon cross examination he said that he was the scene visiting officer and not the Investigation Officer.
18. PW5. Retired Inspector Patrick Ndungu Gatambia told the court that the John on 25/10/2016 at around 11 a.m. he got a report from Mr. Jackson Sila that a woman had been killed at Jambo Court Syokimau. Thereafter, he dispatched 3 officers and he followed them with station land cruiser and at the scene he found Florence Mueni Ndambuki at the verandah of the house. They found 2 knives beside the deceased’s body and they took clothes of John Mali Mulei in his bedroom, the clothes on the floor for blood samples and later they got into the bedroom of John Mali Mulei where they found a 3rd knife fresh with blood stains. They took the sketch files/map. The deceased’s body was taken to Machakos level Hospital and we took the clothes and knives and were taken for analysis. He said that



the clothes we collected are a blue sweater, T- shirt and short. The body was taken to the Mortuary and the Accused Person to the Mlolongo Police Station.

19. He said that after 2 days a Post mortem was conducted at Machakos level 5 Hospital by a Pathologist and it was established that the heart was injured/had injuries which caused the death of Florence Ndambuki. The deceased had wounds arising from the self defence around the body. At the scene, he said that the accused person also had an injury on his right hand which was bleeding and blood samples were taken. The accused looked confused and he did not know what happened.
20. Upon cross examination, he stated that he was the head of the investigation Team and he got to the scene at 11.40 a.m. He said that Pc. Moses Mwangi arrived at the scene ahead of them and the accused person was on the verandah then he went to the bedroom. The deceased was on the floor on the verandah near kitchen near the door to sitting room. He said that the accused looked confused on that day and at the scene as he seemed to know what was going on and other times he did not seem to know. The doctors examined the accused person
21. PW6 ,Dr. Mativo Mwikali produced the Post mortem report under Section 77 CPC that was filled by Dr. Kalekye Ndeto on 27/10/2016. He said that the body was found at Syokimau on 25/10/2016 at 2.17 p.m. The brief history given is that the deceased was found lying dead inside her house after several stabs with a kitchen knife after picking a quarrel with the suspect.

The post mortem findings indicates that the post mortem conducted on 27/10/2016 at Machakos Level 5 Hospital at 12.30 p.m and it was indicated as follows;

General observation – clothing black skirt, green T-shirt that were blood stained, black petticoat and white bra and white pant all soaked in blood.

Female adult well nourished –

Post mortem changes – body was refrigerated

Hardening of the body – rigormortis of lower limbs

External appearance of body – severely pale – paper white

19 stab wounds on the face (5) skull (4) hands (2) on the left and (2) on the right chest (2) and abdomen (5)

The largest stab wound – 8 cm on the face and chest smallest – 2 cm on the scalp.

On the internal appearance of the body respiratory system – stab wound 6th – 7th rib- between 2nd – 3rd ribs.

Massive hemothorax – a lot of blood matter - chest entry on the left side 1500 ml of blood.

A tear on the left ventricle wall – hear 6 cm with blood within pericardium pocket lines the heart 200ml.

Cardiovascular system – same finding on left ventricle wall 6 cm blood in the pericardium 200 mls.

Digestive system penetrating wound on the right side laceration of the stomach 8 cm.

Large gut – 6 cm – spillage of food contents.

Genital – urinary system – Non remarkable

Head – 4 lacerations of the scalp

Nervous system – Brain – non remarkable (normal)



Spinal cord – Non exposed

From examination findings – opinion of cause of death – severe haemorrhage secondary due to chest injuries in the heart penetrating injury to the heart from multiple stab wounds. Specimens taken were blood samples.

22. Upon cross examination he said that the deceased's clothes were blood stained, he did not know where they were taken. He could not tell where the blood items were taken or if blood was taken from the accused person. He said the Report shows 19 stab wounds and he could not ascertain that he may have been under influence of anything.
23. The Ruling on a case to answer was delivered on 27/5/2024

The Defence Case

24. The accused was placed on his defence on 29/10/2024 He elected to give unsworn testimony and stated that he resided at Syokimau in Mlolongo and that he was 27 years old.
 25. That on 24/10/2016 at 5:00pm he was going home and was from Nairobi at Club Faience where he had gone to dance music. That he was involved in a fight with a lady at the place and wanted to dance with her and in the process he was hit on the head face and the right hand.
 26. He told the bouncer to give him first aid, he did not go home that night he slept at the lodging. He was there until 9 am the next morning. He boarded a matatu at Tom Mboya Street and went home at Syokimau where he left from 10:00am.
 27. That on 25/10/2016 he came home and found his father, his uncle Julius Mulei Makau and Jackson Kimeu OCS Mwititi Mati at the gate and saw him for the first time with a police car.
 28. His uncle told him to enter the vehicle. He was at Mlolongo police station for 21/2 weeks and was interrogated and he recorded his statement. Later he was brought to Machakos High Law Courts.
 29. He found PW1 at the scene. He denied murdering his deceased mother. He stated that he was in University of Nairobi studying B. Comm. Degree. That medical reports state that he has been unwell and was taken to Mathare hospital. He prays for help from the court.
- The accused closed his case.

Parties Submissions

The Accused Submissions

30. The accused reiterated the evidence and admits in submissions that he was directly involved in the actions that led to the deceased death .That he is entitled to benefit from courts finding of guilty but insane and that he was suffering from mental sickness during commission of the crime .
31. That he testified in his defence that his mental health sickness was in issue when he was already in prison and that he was suffering from a disease which affected his mind and made him incapable of understanding what he was doing or that it was wrong.
32. That a medical report was filed at the beginning of the trial which confirmed that he was not fit to plead. He was able to take plea on 3/8/2017 which was after 9 months from the incident.
33. The accused mental status was a live matter and it prompted the court to seek further mental assessment as follows:-



- a. The report dated 1/12/2016 indicated that he was confused and incoherent he appeared distressed and anxious
 - b. The report dated 6/6/2017, he was well oriented and had normal concentration and able to take plea.
 - c. The report dated 25/6/2019, he had no memory impairment and was calm well oriented and no thought disorders.
 - d. Report dated 14/1/2020 Republic intends to proceed with the case
 - e. Report dated 28/11/2019, the accused was on treatment for schizoaffective disorder characterized by bizarre beliefs and extreme mood but he was on medication and therefore stable.
 - f. Report dated 10/11/2021, previous history of mental illness and was treated at MTRH with notable improvement.
34. That the Pre-bail report dated 12/1/2022 also indicated that the accused was on treatment for mental health and improvement was noted. The family was concerned of his mental status and opposed to his release on bond.
 35. The accused relies on the case of Leonard Mwangemi Munyasia –Vs- Republic where the case of court of appeal referred to the case of Richard Kaitany Chemagong -Vs- Republic.
 36. The accused submits that Pw1 and pw3 interacted with him before crime commission and immediately after it was committed .Pw 4 and Pw5 equally confirmed that the accused looked shocked confused and was not in his normal position.
 37. That the accused did not have the requisite malice aforethought which constitutes mensrues of the offence. That the threshold required under Section 12 of the Penal Code was met. Further that the fact that he stabbed the deceased and did not see it worthy to escape or conceal evidence is also an indication that he was incapable of understanding his actions.
 38. The accused prays that the court directs his placement at a health facility before the case is reported for the order of the president as per the case of Hassan Hussein Yusuf -Vs- Republic and the case of Republic –Vs- Amani David Dena where such orders were made.

The Prosecution's submissions.

39. The prosecution frames issues as whether the accused was involve in the murder of the deceased , whether the accused had malice was he identified appropriately and whether the cause of death was as a result of the injuries.
40. The prosecution submits that the accused was placed on the scene as per evidence of Pw1 and pw3 and that he was left with the deceased when pw3 went with their late father. The blood stained knives were also recovered and the injury on his hand clearly shows that he intentionally stabbed the mother to death.
41. The fact that he stabbed the deceased 19 times with knives proves malice aforethought. The cause of death was also proved by the postmortem.
42. On the accused mental state, the prosecution case is that every person is presumed to be of sound mind at any time until the contrary is proved as per Section 11 of the Penal Code. That the accused was subjected to mental assessment and was found fit to plead. Another assessment was done in November



2019 and filed on 26/11/2019 which found him capable of giving his defence. The most recent was the report of October 2024 finding him fit and capable to defend himself.

43. The state contends that medical reports availed and steps taken on their part assured protection of the right to fair hearing. In this case the evidence confirmed that a life was lost and the accused was lucid as he delivered the 19 stabs on the deceased. Section 12 of the Penal Code is not applicable.

Analysis & Determination

44. This court considered the evidence on record exhibits, submissions on record. The issue for determination is whether the Accused person is guilty of murder of the deceased (his late mother) under Section 203 of the Penal Code provides for the offence of Murder. The prosecution must prove actus reus comprising of actions or omission that cause unlawful death of the deceased. The accused must also be proved to have had mens rea and intention to commit the offence. Joseph Kimani Njau-Vs- Republic (2014) eKLR,
45. The issues for determination of this case are framed as: whether the offence was proved beyond reasonable doubt and The accused mental state.

Proof of actus reus

46. At trial the prosecution proved that the accused was left alone with the deceased after PW3 left with the father (deceased) early morning on the 25/8/2016 PW3 stated that he was recalled from school at about 11:00am and was dropped home by the school vehicle. He entered the house from the back door since the front on was closed, they found the body of the deceased lying on a pool of blood in the kitchen verandah floor.
47. PW1 also states that they were unable to gain entry and were advised to jump the gate, they also used the back door and they found the body of the deceased lying on corridor in a pool of blood and the Accused was found in the house where 3 knives were recovered and produced as exhibits in court during trial.
48. The witnesses testified that the knife / twisted knife was found in the kitchen. The accused T shirt had blood stains, his shoes were also soaked in blood and he had a stab wound on the right hand.
49. The postmortem confirmed that the cause of death was “severe haemorrhage secondary due to chest injuries in the heart penetrating injury to the heart from multiple stab wounds. “ Therefore, she succumbed to stab 19 wounds. The knives and clothing recovered from the scene were also subjected to further forensic examination by PW2 Government Analyst. The report proved that the blood on the kitchen floor was human blood. That. “The polo t shirt (A1) and the knife (K1 ii) matched with the accused DNA.”
50. The 3 knives were produced as exhibit 3 (a), (b) and the silver bent knife as exhibit 4
51. The PW1 and PW3 admitted that they did not see the accused stab the deceased. The circumstantial evidence proved that the accused was the perpetrator of the offence and that the chain of the events and the state of the accused and the house, his behavior by closing the house doors proved that he was not innocent. The evidence placed him at the scene where the deceased lay in blood his clothes were stained in blood and weapon - knives were recovered.
52. In the case of Mwangi –Vs- Republic [1983] KLR 522.the Court of appeal discussed circumstantial evidence as follows:-



1. An offence of murder can be established by evidence tendered directly pointing to it or by evidence of facts from which a reasonable person can draw the inference that murder has been committed.
2. In a case depending exclusively on circumstantial evidence, the court must, before deciding upon a conviction, find that the inculpatory facts are incompatible with the innocence of the accused and incapable of explanation upon any other hypothesis than that of guilt. It is also necessary before drawing the inference of the accused's guilt from the circumstantial evidence to be sure that there are no other co-existing circumstances which would weaken or destroy the inference.

Proof of malice aforethought & the accused mental state.

53. The prosecution relies on the nature of injuries suffered, the weapon and the fact that the accused occasioned 19 stab wounds on the deceased.
54. In the case of *Rex v Tubere s/o Ochen* {1945} 1Z EACA 63, Eastern Court of Appeal observed that :

“In determining existence or nonexistence of malice one has to look at the facts proving the weapon used, the manner in which it is used and part of the body injured.”
55. On the other hand, the Accused Counsel argued that the accused is guilty of the crime but he suffered from a disease of the mind. Section 12 of the Penal code provides for insanity at the time offence was committed and Section 11 of the *Penal Code* provides for presumption of sanity until the contrary is proved in rebuttal on the accused mental state.
56. Section 166 (1) of the *Criminal Procedure Code* provides for Defence of lunacy adduced at trial as follows;

“Where an act or omission is charged against a person as an offence, and it is given in evidence on the trial of that person for that offence that he was insane so as not to be responsible for his acts 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.”

The medical/mental assessment reports filed in court are as follow;

1. Medical Report – Mthari Hospital - 1/12/2016. The Accused Person suffered acute stress disorder treatment and review in 6 weeks.
2. Medical Report -Mathari Hospital- 6/6/2017 fit to plead.
3. Medical Report – Mathari Hospital -25/4/2019 fit to plead.
4. Medical Report -Mathari Hospital -4/11/2019 fit to plead/capable of making defence.
5. Medical Report Mathari Hospital -23/11/2019 – Treatment on schizoaffective disorder (a chronic relapsing disorder characterized by bizarre beliefs and extremes of mood) he is stable on medication.



6. Mental assessment Report Machakos Level 5 -12/1/2022 -fit to plead
57. This court makes a special finding on the accused based on the testimony of PW3 the Accused person's brother who gave his history depicting strange behaviour being recluse and the various mental assessment Reports; some indicating he is fit to plead (6/6/2017 & 7/7/2017) and the rest showing not fit to plead. The Accused person's mental status at the time of crime commission and subsequent period during trial cannot be one that this Court would construe mens rea premeditated willful intention and malice aforethought to commit murder inspite of murder weapon Knives found at the scene and the deceased his mother stabbed 19 times.
58. The standard of proof was addressed in the case of Leonard Mwangemi Munyasia –Vs- Republic [2015] eKLR: where the Court of Appeal held that :
- “it is the duty of trial courts, to inquire specifically into the question of insanity, not only in situations where such defense is raised but also where, as here, it becomes apparent to the court from the accused person's history or antecedent that insanity may be an issue.”
59. In Wakesho –Vs- Republic [2021] KECA 223 (KLR) where the court the Court of Appeal cited Leonard Mwangemi Munyasia (supra)the court also established that-
- “Although the defence of insanity does not appear to have been expressly raised, it was, as already mentioned, a recurring theme throughout the trial and the trial court ought, in our view, to have specifically inquired into it before convicting the appellant.”
60. Section 12 of the *Penal Code* requires the accused to raise the defense of insanity and avail strict proof that of his mental state at the time when the offence was committed. However, as stated in the case of Wakesho –Vs- Republic, it would be impossible to lead direct evidence of such.
61. The Court finally held that the preponderance of evidence showed that the appellant suffered mental disorder. That:
- “Where, as here, it emerges from the evidence that the defence of insanity is in issue, (and the standard in that regard is on balance of probabilities) the prosecution is required to disprove it. (See Tadeo Oyee s/o Duru vs. R [1959] EA 407).”
62. The accused did not present any report that addressed his mental state before trial and at time of the crime. The first mental assessment was to determine his eligibility for plea considering the gravity of this offence and the court took time to protect the accused interests under Article 50 of *the Constitution*.
63. He was able to take plea as per report dated 12/1/2022 he was also on treatment and follow up.
64. A report dated 11/7/2019 and 31/10/2019 also found him fit to plead and present his defence and he managed to give unsworn defence which was coherent stating that he went dancing in Nairobi at club Finese that day and that he came back and slept only to be escorted by police officers.
65. The report dated 31/10/2019 indicated that he was on treatment for schizoaffective disorder, a chronic relapsing disorder characterized by bizarre beliefs & extremes of mood. He was stable and was under medication.
66. The report dated 10/11/2021 stated that he had previous history of mental illness and was treated at mathare while still in custody. There was no history of proactive mental abuse.



67. The above reports comprised of direct evidence which failed to point out any history of mental sickness and only refer to his status during trial.
68. The witnesses testified on his behavior evidence adduced by Pw1, pw3, pw4 and pw5 addressed the accused behaviour before and after crime commission. Pw3 the accused brother stated that his brother was not behaving normally before commission of the offence. That he stopped communicating with people in 2016 and that he would stay alone, he was rude to people without any reason and was very rude to the deceased.
69. The accused had also told him he was not feeling well and how he would hear voices of people speaking to him the head. .He was previously taking drugs. He also kept disappearing from home and would ask strangers for things and enter their vehicles
70. Pw4 and pw5 came to the scene and found the accused in shock and not in apposition of a normal person .That he looked confused and he did not know what happened.Pw1 stated that he knew the accused from before and he used to be sent by his parents of bring timber . That he was not normal for 3 months before the offence. He also know him from childhood and that, he used to behave abnormally and would ask for outrageous things from his mother .The accused was not taken for treatment all this period and this potentially casts doubt on the credibility of the evidence .
71. Considering the totality of the evidence, I find that the accused was guilty of the unlawful killing of the deceased. The Medical Reports give different opinion on the status of mental capacity of the Accused Person such that it is not possible to confirm his mental state at the time of commission of the offence. However, he was incapable of having requisite mens rea under Section 203 as read with Section 206 of the Penal Code.
72. Further that the evidence proved on balance of probability that he was suffering from mental sickness .The burden was also on the prosecution to rebut the observations of witnesses on the accused mental state. The evidence raised doubt on whether he intended to act as he did had control of his faculties .The accused’s state of mind is crucial in determination of the matter.
73. In the case of Republic –Vs- Okwara [2024] KEHC 1360 (KLR) , Musyoka J explained that a conviction of guilty but insane under Section 166 of the Penal Code does not require mens rea and was intended for medical treatment of the accused and to protect the societyHe stated as follows;
- “It would appear that a conviction of guilty but insane, does not require mens rea and is based purely on proof of the actus reus. It is an oddity to hold a person criminally responsible, in the absence of mens rea. I hazard that a conviction under those circumstances is intended to find a justification for taking the convict away from society, not for the purpose of punishment, but either to facilitate treatment for the convict for his mental illness, or to secure the society, or both.”
74. The Accused based on the evidence would /is found guilty of the offence of murder the knives recovered, he was found at the scene despite his alibi defense that he had gone dancing he came home and was arrested. He ha bloodstained clothes and shoes although DNA was not done to confirm whose blood it was. Nor were blood samples from the deceased taken.
- The fact of the Accused person found at the scene in the house locked and deceased on the floor bleeding shows he had the knowledge and opportunity and used it and committed murder.
75. The totality of the evidence on record is that the Accused committed the offence of murder as charged to his late mother the deceased by stabbing her 19 times. PW1gave direct evidence of deceased and the



Accused found in the house locked. When his father arrived and they opened the door after jumping over, the Accused was found covered in blood and there were kitchen knives and blood stained shoes.

The direct evidence places the Accused person at the scene and the weapons used were recovered at the scene.

However, in spite of the unfortunate situation and circumstances, the Court observed the Accused person severally during trial on 1/2/2021 & 8/3/2022 and his conduct strongly suggested one who was not stable.

76. The Court record confirms Mental assessment Report 1/12/2016 he suffered acute stress disorder; yet mental assessment Reports; 12/01/2022, Machakos Level5 Hospital found him fit to plead 10/11/2021 Machakos Level 5 found him fit to plead;28/11/2019 from Mathari Hospital -fit to plead 4/11/2019 from Mathari Hospital Fit To Plead25/4/2019 from Mathari Hospital -fit to plead 6/6/2017 from Mathari Hospital -fit to plead
77. The accused requested to be sentenced at the pleasure of the President , the Constitutionality of this mode of sentence and the uncertainty of the period vis a vis the accused right to fair trial has been addressed by the High Court in the case of Republic–Vs-SOM [2018] eKLR, where the Hon D. Majanja J declared the provisions of Section 166 of the *Criminal Procedure Code* unconstitutional, to the extent that it takes away the judicial function to determine the nature of the sentence or consequence of the special finding contrary to Article 160 of *the Constitution* by vesting the discretionary power to the President to determine the nature and extent of the sentence.

Disposition

78. At this stage due to conflicting mental assessment reports on the Accused Peron’s mental status the Court cannot conclusively confirm mens rea malice aforethought.
79. Therefore, whether conviction is on murder by virtue of Section 11& 12 of the *Penal Code* subject to confirmation of his mental status.
80. The accused should be availed for Pre-sentencing process and a medical report should be availed to this court on mental status treatment management and Pre-Sentence Report on proposals on Way Forward in light of existing circumstances and/or appropriate sentence See the case of Republic –Vs- JKN [2021] eKLR.

21 I am persuaded that the proper way to proceed after convicting an accused as ‘guilty but insane’, is to take such action as will ensure the full and fair trial rights of the accused are complied with. These include appreciating that such rights can only be properly complied with if the court finally concludes the case before it with the issuance of a sentence; the sentence must be determinate so as to give finality, should the convict wish to exercise his right to appeal; and that a report be forwarded to the executive branch to enable it to take such constitutional action under Article 133 of *the Constitution* as it may deem appropriate, to exercise the power of mercy.”

JUDGMENT DELIVERED DATED & SIGNED IN OPEN COURT IN MACHAKOS HIGH COURT VIRTUALLY/PHYSICALLY ON 19/5/2025

M.W.MUIGAI

JUDGE

Mr. Kyalo for the Accused person. We need time.



Further mention on 11/6/2023.

Ms. Kaburu – Let us take date 11/6/2025.

