



**OKK v Republic (Miscellaneous Criminal Application  
E156 of 2024) [2025] KEHC 7940 (KLR) (9 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 7940 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIBERA  
MISCELLANEOUS CRIMINAL APPLICATION E156 OF 2024**

**DR KAVEDZA, J**

**JUNE 9, 2025**

**BETWEEN**

**OKK ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The applicant was charged and convicted of assault causing actual bodily harm under section 251 of the *Penal Code* and, having been found guilty but insane, was detained at the President’s pleasure under section 167(1)(b) of the *Criminal Procedure Code*.
2. He now seeks a review of his sentence, arguing that he has been incarcerated since 17th May 2013, a period of twelve (12) years during which time he has received treatment and rehabilitation. He maintains that he is now fit and has served sufficient time to justify his release.
3. Reports from the Officer in Charge of Kamiti Maximum Security Prison dated 6th December 2024 and 11th February 2025 indicated that the applicant is disciplined, enjoys good health, maintains good conduct, and has participated actively in rehabilitation programmes.
4. A report from a Kenya Registered Psychiatric Nurse dated 11th February 2025 further confirms the applicant’s stability. The medical practitioner who has been managing his mental health care, states that the applicant is on medication, is mentally stable, able to follow daily routines with minimal supervision, and has insight into his condition.
5. The application was canvassed by way written submissions of written submissions which have been duly considered and there is no need to rehash them.
6. It is evident that the applicant is seeking a review of the order made by the trial court on 17th May 2013, which directed that he be detained at the President’s pleasure.



7. The issue of insanity and the place of mental illness in the criminal justice system in Kenya is far from being settled as there are conflicting jurisprudence emerging from the Kenyan superior courts. In *Wakesho vs Republic* [2021] KECA 223 (KLR) the Court of Appeal set out the distinction between guilty for reason of insanity and guilty but insane and held that it was a legal paradox to find a person guilty but insane in light of the requirement of criminal responsibility and culpability and stated that a finding of not guilty for reasons of insanity would be more legally sound in the circumstances where the accused person was suffering from a defect of reason caused by decrease of mind at the time of the commission of the offence.
8. The court held that the court should be granted discretion to impose appropriate measures to suit the circumstances of each case upon a finding of not guilty for reasons of insanity and that to go through a motion of trial whose nature and effect the accused person did not understand and a conviction based on section 166 of the *Criminal Procedure Code* was manifestly unfair in light of article 50(2) of the *Constitution*. The court proceeded to quash the conviction and ordered that the Appellant be taken to a mental hospital until such a time when he was not a danger to society or himself.
9. In *Isaac Ndegwa Kimaru & 17 others v Attorney General And Another* Petition No 226 of 2020 [2022] KEHC 144 (KLR) as regard section 166 of the *CPC* having reviewed several decisions of the Court stated that the Section was unconstitutional on the basis of the doctrine of separation of powers and that the persons so held at the pleasure of the President were entitled to protection under article 54 of the *Constitution* and Part 3 of the *Persons with Disabilities Act* and that such a person is sick whose place is in hospital and not prison.
10. The court proceeded to order that the persons who are detained at the pleasure of the President in prison facilities ought to be arraigned before the courts which committed them and the courts must take charge of those persons and make appropriate orders and directions.
11. The High Court's supervisory and revisionary jurisdiction under Sections 362 and 364 of the *Criminal Procedure Code* and Article 165(6)–(7) of the *Constitution* applies only to subordinate courts and quasi-judicial bodies, not to superior courts. Therefore, any order from the High Court cannot bind a court of concurrent or higher jurisdiction, such as the Court of Appeal. A declaration of unconstitutionality in one High Court matter Isaac Ndegwa (supra) cannot retrospectively affect final decisions made by another High Court or the Court of Appeal. Such orders risk violating jurisdictional boundaries and are not legally enforceable beyond their proper scope.
12. In this case, the applicant has approached the Court by way of revision of the sentence wherein the trial court entered a finding of guilty but insane and detained the applicant at the pleasure of the president.
13. It is noteworthy that the provisions of section 166 of the *Code* lay an elaborate procedure of; dealing with a person detained at the President's pleasure. In my considered opinion, what seems to be the issue is non-compliance or failure to enforce of these provisions.
14. The provisions require inter alia that; the court shall report the case for the order of the President, and in the meantime, order the accused to be kept in custody "in such place and in such manner as the court shall direct". The President may also order the person to be detained in "a mental hospital, prison or other suitable place" of safe custody. Apparently, it does appear that, most of these persons are only committed to Prison custody. The provisions further, require periodical reviews of the persons so detained, at the expiration of a period of; three years from the date of the President's order and thereafter at the expiration of each period of two years from the date of the last report, to enable an informed decision be made, in respect of the condition, history and circumstances of the person so



detained. Again this is rarely done. Indeed, upon review, the President can order for the discharge of such a person subject to his own and the safety of the public.

15. That said, and while the legal landscape continues to evolve following various court pronouncements, it is crystal clear that in the absence of clear enforcement mechanisms, the appropriate course of action may be to seek an order of mandamus. Such an order would compel the President to fulfil his statutory duty under section 166 of the *Criminal Procedure Code*, particularly where there has been inaction or delay. This aligns with the constitutional expectation that state officers must act in accordance with the law and should not frustrate the administration of justice through omission. The writ of mandamus, in this context, would serve to uphold the rule of law by requiring the performance of a legal obligation imposed by statute.
16. The applicant has been incarcerated at Kamiti Maximum Security Prison for thirteen (13) years, during which time he has received psychiatric treatment and undergone rehabilitation. The psychiatric report confirms that he is now aware of his condition and is able to carry out daily activities with minimal supervision. There is no indication that he poses a risk to himself or the public. Based on this, the court finds that continued detention is no longer necessary purely on mental health grounds.
17. However, recognising the recommendation for minimal supervision, the court deems it appropriate to take a structured approach towards the applicant's reintegration. To that end, the probation office is directed to trace the applicant's family and prepare a comprehensive report on his home environment and support system within thirty (30) days from the date of this order. This will assist the court in determining a suitable course for his release and supervision.
18. Final Orders:
  - i. The probation office shall trace the applicant's family and file a probation report within thirty (30) days.
  - ii. The Officer in Charge, Kamiti Maximum Security Prison, shall escort the applicant to Mathari Mental Hospital for psychiatric evaluation to confirm whether the applicant is no longer suffering from a mental disorder within thirty (30) days from the date hereof.

Orders accordingly.

**RULING DATED AND DELIVERED VIRTUALLY THIS 9<sup>TH</sup> DAY OF JUNE 2025**

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**D. KAVEDZA**

**JUDGE**

In the presence of:

Applicant Present

Mutuma for the Respondent

Tonny Court Assistant

