



REPUBLIC OF KENYA



**Okisai v Republic (Criminal Petition E004 of 2023)
[2024] KEHC 1298 (KLR) (16 February 2024) (Ruling)**

Neutral citation: [2024] KEHC 1298 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUSIA
CRIMINAL PETITION E004 OF 2023
WM MUSYOKA, J
FEBRUARY 16, 2024**

BETWEEN

PHILIP OKURUTU OKISAI PETITIONER

AND

REPUBLIC RESPONDENT

RULING

1. I note from the judgement of 18th February 2019, in Busia HCCRC No. 15 of 2014, that the petitioner was found guilty but insane, and was to be detained at the pleasure of the President. He would like a review of that sentence.
2. The starting point should be the decision in *Kimaru & 17 others v Attorney-General* [2022] KEHC 114 (KLR)(Mrima, J), where the sentencing of a person found guilty but insane, to detention at the pleasure of the President, was declared unconstitutional. There were directions that the persons affected by that order, like the petitioner herein, should have been produced before the courts which had made the orders, for review of their sentences in line with that decision. I am surprised that that never happened in this case.
3. Anyhow, the sentence imposed was on the basis that the accused person was insane or of unsound mind at the time of the commission of the offence, and the detention at the pleasure of the President was designed afford opportunity for him to be held in a facility where his mental issues could be addressed. Therefore, before any orders can be made on his sentence, it will be crucial that his current mental health status be established.
4. Consequently, I direct the prison authorities, where the petitioner is being held, to forthwith present the petitioner to a government psychiatrist, for evaluation of his current mental health. The said psychiatrist shall prepare a medico-legal report, which shall thereafter be presented in court. A certified copy of this ruling, or an order duly extracted here from, shall be furnished to the said psychiatrist. The



matter shall be mentioned after 30 days, for compliance, and for further directions or orders. Orders accordingly.

RULING DELIVERED, DATED AND SIGNED IN OPEN COURT AT BUSIA ON THIS 16TH DAY OF FEBRUARY 2024

WM MUSYOKA

JUDGE

Mr. Arthur Etyang, Court Assistant.

Mr. Philip Okurutu Okisai, the petitioner in person.

Advocates

Mrs. Chepkonga, instructed by the Director of Public Prosecutions, for the respondent.

