



**KAO v Republic (Miscellaneous Criminal Application  
E098 of 2022) [2023] KEHC 3428 (KLR) (13 April 2023) (Ruling)**

Neutral citation: [2023] KEHC 3428 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KISUMU  
MISCELLANEOUS CRIMINAL APPLICATION E098 OF 2022**

**RE ABURILI, J  
APRIL 13, 2023**

**BETWEEN**

**KAO ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The file herein was brought to this court from Kisumu Chief Magistrate’s Court Miscellaneous Criminal Application No. E014 of 2021 DCI Kisumu Central vs KAO.
2. In the above file, the suspect KAO was arrested as a suspect for the offence of murder but he could not be arraigned as he was said to be suffering from mental illness.
3. The Magistrate’s court ordered for mental assessment which was done and vide a report dated September 20, 2022 from JOOTRH, the suspect is said to be coherent and all his cognitive functions are intact hence he is fit to plead.
4. That being the case, I direct that the said mental assessment report be forthwith served upon the Office of Director of Public Prosecutions (ODPP), Kisumu.
5. The ODPP shall then, pursuant to Article 157 of the Constitution, make a decision as to whether to charge the suspect and with what offence since there is no pending charge against the suspect.
6. I direct that Kisumu Chief Magistrate Miscellaneous Application No. E104 of 2021 be returned to the lower court with a copy of this Ruling and order to enable the court finalize the matter with the ODPP.
7. This file is closed.

**DATED, SIGNED AND DELIVERED AT KISUMU THIS 13<sup>TH</sup> DAY OF APRIL, 2023**

**R. E. ABURILI**



**JUDGE**

