



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MAKUENI**

**HIGH COURT CRIMINAL CASE NO. 1 OF 2018**

**REPUBLIC.....PROSECUTION**

**-VERSUS-**

**MMM.....ACCUSED**

**RULING ON SENTENCE**

1. The accused herein, having been tried for murder, has been found by this court to be guilty but insane under section 166(1) of the Criminal Procedure Code (cap.75).

2. While Ms. Gitau, the learned Prosecuting Counsel informed the court that we apply section 167(1) (b) of the Criminal Procedure Code, Mr. Hassan for the defence left the matter of sentence to the court to decide.

3. Section 167(1)(b) relied upon by the Prosecuting Counsel states as follows –

**“167(1) If the accused, though not insane, cannot be made to understand the proceedings.**

*(a) .....*

***(b) In cases tried by the High Court, the court shall try the case and at the close thereof shall either acquit the accused person or, if satisfied that the evidence would justify a conviction, shall order that the accused person be detained at the president’s Pleasure”.***

4. In my view, and with due respect, section 167(1)(b) is not applicable in the present case, as the accused was found guilty but insane under section 166(1) of the Criminal Procedure Code, and the subsequent orders on custody of the accused person are provided for under section 166(2) and (3) of the Criminal Procedure Code in which it is provided as follows –

***“166(2) when a special finding is so made, the court shall report the case for the order of the President, and shall meanwhile order the accused to be kept in custody in such a place and in such manner as the court shall direct.***

***(3) The President may order the person to be detained in a mental hospital, prison or other suitable place for safe custody.”***

5. Though the provisions of section 167(1)(b) and 166(2) and (3) apply in different situations, the effect is the same, in that the guilty person is put in custody at the mercy of the President or the person to whom the President delegates his or her powers.

6. On my part, the accused herein having been found guilty but insane under section 166(1) of the Criminal Procedure Code, I order as follows –

**1) The accused is detained at the President’s pleasure and will remain in custody at Makueni G.K Prison or any prison as will hereafter be determined by the Commissioner of Prisons, and a report be made to the President by the prison authorities that he has been found guilty but insane.**

**2) The Deputy Registrar of this court will immediately transmit to the prison authorities at Makueni G.K prison, a copy of the judgment of this court for transmission to the President, with regard to the detention in custody of the accused herein in accordance with the provisions of section 166(1), (2), (3), (4), (5), (6) and (7) of the Criminal Procedure Code (cap. 75).**

Right of appeal explained.

**DELIVERED, SIGNED & DATED THIS 5TH DAY OF OCTOBER 2021, IN OPEN COURT AT MAKUENI.**

.....

**GEORGE DULU**

**JUDGE**