



REPUBLIC OF KENYA

HIGH COURT AT NAIROBI

CRIMINAL CASE NO. 5 OF 2013

LESITT, J

REPUBLICPROSECUTOR

V E R S U S

FJOG.....ACCUSED

RULING

1. The accused **FJOG** is facing one count of murder contrary to **Section 203** of the **Penal Code**. The accused was arraigned in court on 8th January, 2013 and was immediately remanded in custody pending his mental assessment status.
2. The accused was admitted at Mathare Mental Hospital and so did not show up in court on 29th January, 2013. Plea was finally taken on 28th May 2013.
3. After many failed attempts to have the case heard, on 25th February, 2015 the learned trial Judge stated that in view of two conflicting reports regarding the accused mental status, the accused be taken to Mathare Hospital for another mental assessment examination.
4. The accused was taken for Mental Assessment and a Report presented to court on 12th May 2015 which indicated that he was *UNFIT TO STAND TRIAL*. The Learned trial judge ordered that the accused be escorted to Mathare Mental Hospital for admission to facilitate his treatment.
5. The matter was mentioned in court on 10th November 2016, more than a year later and a Production Order issued for the accused to be availed in court together with a Mental Report showing his current mental status. The accused was not produced on various occasions namely:
23rd November 2016, 29th November 2016, 8th December 2016, 15th December 2016, 13th January 2017, 4th February 2017, 8th March 2017.
6. On 20th March 2017, the Prosecution Counsel informed the court that they had received information that the accused escaped from Mathare Mental Hospital. The Counsel promised to avail a signal, the official communication informing the Prisons of accused escape. None was availed on 21st March 2017 prompting the court to require it be availed. The court also issued a warrant of arrest for the accused.
7. The matter has come up for mention for the signal and for accused between 4th May 2017 and 21/2/2018. On 21/2/18 neither signal nor accused was availed. The court required that affidavit showing efforts made so far to trace the accused be filed by the investigating officer.
8. After several mentions, the prosecution informed court that an affidavit was finally filed in this court dated 31st May 2018. There is however no such an affidavit on record. Instead there is a letter dated 24th September 2018 from the Assistant Chief Mudome Sub-Location Funyula to the OCS Kariobangi Police Station informing the latter that one Mr. Richard Ratemo (The Investigating Officer in this case) had been in his area in search of the accused. That the Assistant chief assisted in looking for the accused in the greater Samia Sub-County which has two other sub-locations namely Nyakhobi and Namboboto. The efforts were fruitless.
9. After several other mentions during which time the investigating officer was expected to make efforts to trace the accused, the investigating officer filed an affidavit dated 9th July 2019. Ms. Onunga, Learned Prosecution accused urged that efforts made to trace accused had not borne any fruits but that he was still being sought. Counsel urged the court to keep this file in abeyance.
10. I have perused the affidavit of P.C. Richard Ratemo dated 9th July 2019. The officer explains that the accused escaped from Mathare

Mental Hospital in the month of May 2013, the same month he was admitted to that hospital. The officer then set out places he had traveled to in search of the accused.

11. I am satisfied that the Investigating Officer has done his best to try and trace the accused person. He had traveled to the ends of this country trying to find him. These efforts which began in 2013 have been to no avail.

12. I note that the accused was undergoing treatment for his mental illness. I take judicial notice of the fact he escaped from the Maximum Mental Hospital i.e. Mathare Teaching and Referral Hospital at a time when the doctors were on strike. He was among many others who escaped from the facility at the time.

13. I also note that the accused was arraigned in court on 8th January 2013. It has been a period of seven years now. The case has never been heard. It is uncertain when the accused will be found, and whether once found he will be fit to stand trial.

14. I find that in the circumstances of this case, it will not be prudent or expedient to keep this court file open and in abeyance as the prosecution counsel suggested. The best would be to close the file and maintain open the warrant for accused arrest for execution.

15. Having come to this conclusion, I find that the orders that are most effective to make in this case are as follows:

a) I order that this file stands closed.

b) The warrant of arrest against the accused to remain in force.

c) The Director of Public Prosecution is at liberty to institute a fresh proceedings and file an information as and when the warrant of arrest has been executed and accused apprehended.

16. Those are my orders.

DATED AT NAIROBI THIS 18TH DAY OF JULY, 2019.

LESIT, J

JUDGE