



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CRIMINAL CASE NO. 65 OF 2012

LESIT J

REPUBLIC.....PROSECUTOR

VERSUS

MMW.....ACCUSED

RULING

1. The accused **MMW** is charged with murder contrary to **Section 203** as read with **Section 204** of the **Penal Code**. The particulars are:

“That on the 2ND day of August, 2012 at about 6.00pm at Gathiru Village in Gatundu South District within Kiambu County murdered Morgan Mwangi Kamunya.”

2. The accused was first arraigned in court on 15th August 2012. He has never taken plea since then, reason being the Psychiatric tests conducted on him revealed he is not capable of pleading to the charges and conducting his defence. This is contained in several reports from diverse consultants based at Mathari Hospital.

3. The court on 15th February, 2016 ordered for a comprehensive psychiatric evaluation by a panel of 3 psychiatrists. A report dated 8th March, 2016 was filed which was prepared the three Psychiatrists who evaluated the accused. The report explained that the accused had a history of cannabis abuse since 2000 when he was a form two student. In their opinion, the accused was not fit to plead because he suffers from Schizophrenia induced by cannabis abuse and required in-patient treatment.

4. From the record, I note that on 29th November 2016, the prosecution made an Oral application under **Section 162(4)** of the **Criminal Procedure Code**. The defence did not oppose the said application and asked that a periodic report be filed.

5. The record shows that the trial court considered the application and on 23rd January, 2017, Korir, J issued the following orders:

I. That the accused Michael Mucheru Waweru be committed to safe custody at the Mathari Mental Referral Hospital until such time that he shall be capable of pleading to the charges and conducting his defence in accordance with section 162(4) of the Criminal Procedure Code.

II. The cabinet secretary and Principal Secretary Ministry of interior be supplied with this report and order in accordance with section 162(4) & (5).

III. There be a periodic medical reports filed in court at least every 12 months while the accused remains committed under this order.

IV. The Deputy registrar to extract and serve the above orders and transmit the report ordered in (2) above.

V. Mention on 23rd January 2018.

6. On further perusal of the file, I noted a letter dated 3rd February, 2017 addressed to the Cabinet Secretary Ministry of Interior & co-ordination of National Government from this court's Senior Deputy Registrar forwarding a mental capacity report of the accused person as

ordered. The letter bears a ministry of interior stamp denoting received and is dated 14th February 2017.

7. In adherence to the order for a periodic psychiatric report every 12 months, one dated 19th February 2018 was filed and it opined that the accused was not fit to plead and required continued use of antipsychotics medications. Further reports dated 24th July 2018, 20th November 2018, 14th February 2019 have all opined that the accused is not fit to stand trial.

8. The latest Psychiatric report is dated 25th April, 2019 by one Dr. Mucheru Wang'ombe. He has explained that the accused has been on follow up for intellectual Disability which is a developmental disorder that does not improve with time. The Doctor opined that the accused is unlikely to be fit enough to stand trial given the fact that his condition is a developmental disorder that deteriorates over time. Chances of recovery are therefore nil.

9. I have taken time to peruse and state in brief the history of this case. It is clear that this case had already been handled by Korir J under **Section 162(4)** of the **Criminal Procedure Code** and appropriate orders issued. Those orders have been overtaken by events as the accused can no longer stand trial. I say so having regard to the report that explains that the accused is unlikely to recover.

10. Having considered the accused mental treatments history and the fact that he has been incarcerated for a period of 6 years, I find that it would be best to have the accused placed in a safe place where he can get the appropriate medical care, security, day to day monitoring and management as provided under **Section 162(4)** of the **Criminal Procedure Code**.

11. Consequently I order as follows:

- 1. The accused remains under the Security, Care Management and treatment of Mathari National Teaching & Referral Hospital.**
- 2. The proceedings herein be typed and a certified copy of the record be transmitted to the Ministry concerned for consideration by the President**
- 3. In the meantime, I hereby mark this file as closed.**
- 4. The Director of Public prosecution is at liberty to institute afresh information when the accused is found fit to stand trial.**

DATED AT NAIROBI THIS 17TH DAY OF JULY, 2019.

LESIT, J.

JUDGE.