



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

CRIMINAL CASE NO. 16 OF 2014

REPUBLIC PROSECUTOR

VERSUS

G K N ACCUSED

RULING

1. The accused **G K N** was charged with the offence of murder contrary to **Section 203** as read with **Section 204** of the **Penal Code** the particulars of which were that on the 8th day of August, 2013 Githunguri District within Kiambu Country murdered **J N N**.

2. He first appeared in court on 4/2/2014 when his plea was deferred to 11/2/2014 when the Advocate for the accused informed the court that the same had a history of mental problem though he had been declared fit to stand trial and the court directed that a fresh mental status report be carried out and the Judge (Muchemi J.) fixed the matter for mention and on 4/6/2014 committed the convict to Mathare Hospital for a period of one month which was later extended for a period of three (3) months on 17/7/2014 which order has been extended severally.

3. On 1/11/2016 the prosecution produced in court a medical report confirming that the accused was now fit to take plea and on 9/11/2016 the same took his plea when a plea of not guilty was recorded before Lesiit J. and the matter fixed for hearing before me for 13/14/2/2017. On 13/2/2017 the court's attention was brought to the fact that the accused was not fit to stand trial and an order sought once again to commit the same to Mathare National Hospital for further treatment and the court (Wakiaga J.) ordered that he be committed for a further three (3) months which was done.

4. On 1/4/2018 upon an application by the prosecution, **DR. MUCHERU WANG'OMBE** - a specialist Psychiatrist appeared before me and testified that the accused first went to Mathare Referral in the year 1996 where he has been treated from that date for schizophrenia chronic relapsing condition of abnormal beliefs and perceptions without stimuli for which he had been on optimal trauma and shock therapy but had not improved. She stated that on 21/1/2018 she presented a medical report having been seen by Dr. Ngugi Gatere who had declared him fit to stand trial only for him to relapse and returned back to the hospital for treatment and at the time of her appearance before me, the accused could still not comprehend the charges and therefore formed an opinion that the same was unlikely to recover fully so as to understand the court process and court proceedings. She produced all the medical reports in respect of the accused person.

5. Based on the said evidence Mr. Meroka for the state made an oral application under **Section 162** of the **Criminal Procedure Code** for the court to make a finding referring the accused to the Cabinet Secretary (Minister) for the purposes of further treatment and staying these proceedings. The defence did not object to the said application.

6. **Section 162** of the **Criminal Procedure Code** provides as follows:-

“(1) When in the course of a trial or committal proceedings the court has reason to believe that the accused is of unsound mind and consequently incapable of making his defence, it shall inquire into the fact of unsoundness.

(2) If the court is of the opinion that the accused is of unsound mind and consequently incapable of making his defence, it shall postpone further proceedings in the case.

(3) If the case is one in which bail may be taken, the court may release the accused person on sufficient security being given that he will be properly taken care of and prevented from doing injury to himself or to any other person, and for his appearance before the court or such officer as the court may appoint in that behalf.

(4) If the case is one in which bail may not be taken, or if sufficient security is not given, the court shall order that the accused be detained in safe custody in such place and manner as it may think fit, and shall transmit the court record or a certified copy

thereof to the Minister for consideration by the President.

(5) Upon consideration of the record the President may by order under his hand addressed to the court direct that the accused be detained in a mental hospital or other suitable place of custody, and the court shall issue a warrant in accordance with that order; and the warrant shall be sufficient authority for the detention of the accused until the President makes a further order in the matter or until the court which found him incapable of making his defence orders him to be brought before it again in the manner provided by Sections 163 and 164.”

7. The Court of Appeal of Kenya has had this to say on **Section 162** of the **Criminal Procedure Code** in **CHARLES MWANGI MURAYA V REPUBLIC [2001] eKLR :-**

“We have previously, quoted verbatim Section 162(1) CPC in this judgment.

The words of the Section, to our minds, are clear and unmistakable. They place a duty on the Court, to invoke the Section, at the time, in the trial or committal proceedings, when the issue of unsoundness of the accused’s mind arises. That is the stage at which, the Court should carry out an inquiry into the issue. We stress the use of the word “shall” in the section which, to our mind, places a mandatory obligation on the Court to carry out the inquiry at the time at which the issue arises in the trial or committal proceedings. We are satisfied that the section does not allow the Court to defer the inquiry until the judgment because, at that stage, it will be too late to carry out an inquiry and, even if the inquiry is carried out, its results would be inconsequential to the trial, should, for example, the accused be found to have been mentally unfit to stand trial.

We are fortified in our view by section 162(2) CPC which we quoted earlier in this judgment. It is obvious, that sub-sections (1) and (2) of section 162 of the CPC, must be taken together. The inquiry is carried out in terms of sub-section (1). If the inquiry indicates that the accused person is capable of making his defence, then the Court adjourns further proceedings and the steps set out in the sub-sections 3, 4 and 5 of section 162 of the CPC are then taken. It is a fundamental requirement in criminal trials that an accused person should understand, follow and fully participate in his trial. Section 162 CPC as a whole, is a safeguard meant to achieve that fundamental requirement. That is the reason why the section makes it mandatory for an inquiry to be done immediately when the issue arises, and if, upon inquiry, there is evidence of unsoundness of mind, further proceedings must be adjourned and further consequences follow to ensure the accused is medically treated and becomes mentally fit to understand, follow and participate in the trial.”

8. The Court of Appeal of Kenya has further stated in the case of **NYAWA MWAJOWA v REPUBLIC CR. APPEAL NO. 46 OF 2015** on **Section 162** of the **Criminal Procedure Code:-**

“We are of the view that the provisions ought to be strictly followed and if they have outlined their purpose they should be properly indicated or reported instead of encouraging a practice that is in direct conflict with statutory provisions. While we understand the basis of the practice of sidestepping the legal requirement involving the Cabinet Secretary and the President to be a desire to speed up the trial or conclusion of the issue of the accused persons mental status which is otherwise delayed by the bureaucracy of the two offices, we must emphasize that these are requirement of the law in respect of which no office can claim to be too busy. The situation in our opinion lies not in short-circuiting the requirements of the law but in insisting that the concerned offices discharge their legal duties with due dispatch as expected under the Constitution and the Criminal Procedure Code . . .”

9. Having made an inquiry as to the soundness of mind of the accused person and based on the medical reports produced before court including the oral testimony of Dr. Wang’ombe, I have come to the conclusion that the accused is of unsound mind and is unable to understand the proceedings and or make his defence and hereby postpone further proceedings in this case.

10. Whereas this is a matter where bail can be granted, I have taken into account the circumstances under which the offence was committed noting that the accused is charged with the murder of his father and therefore the home situation is not conducive for his release on bond. I therefore order that the accused be kept in safe custody at Mathare National Hospital under the provisions of **Section 162 (4)** and certified copies of these proceedings be transmitted to the Cabinet Secretary in charge of Interior and National Co-ordination for consideration of the President under Sub-section (5) thereof.

11. In view of the provisions of **Section 163** of the **Criminal Procedure Code** I further direct that this matter be mentioned after six (6) months for further directions on the same and it is so ordered.

DATED, SIGNED and DELIVERED at Nairobi this 8th day of May, 2018

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J. WAKIAGA

JUDGE

In the presence of:-

Miss Wegulu for the State

Ms. Odhiambo for Saenyi for the accused

Accused absent

Court clerk Paul