



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT VOI

CRIMINAL CASE NO. 3 OF 2018

BETWEEN:

REPUBLIC

AND

E W.....ACCUSED

RULING

1. This matter comes before the court on a preliminary issue raised by Counsel for the Accused at the plea taking stage.
2. The Accused is charged with murdering her child T M on 8th day of March 2018. From the record it seems that the Accused underwent a psychiatric evaluation to assess her fitness to plead/capacity to plead. The psychiatric evaluation is said to be dated 22nd March 2018 but a copy has not been placed on the Court File.
3. On 26th March 2018 the Accused was arraigned before the court to answer the charge. On that date State Counsel for the DPP made an Application for the Accused to undergo a comprehensive psychiatric evaluation. The evaluation was to be carried out at Mathare Mental Hospital and the Accused was to be remanded at Langata Women's Prison pending the filing of psychiatric report. That Application was granted as prayed. The ground on which prosecuting Counsel relied for requesting further assessment was that the accused was known or suspected to have previously suffered from depression. The Report found the Accused fit to plead.
4. On 26th June 2018 when the Accused was returned to court to take her plea an Advocate (Mr Kinango) had been appointed to represent her. The Accused wished to plead guilty however counsel took a different view and so plea was deferred.
5. Defence Counsel first submitted that the confession was forced. Secondly Counsel sought to challenge the second psychiatric report authored by Dr. Muchere Wangombe. Counsel for the Defence did not at that stage, specify who would provide an alternative psychiatric report on the part of the Defendant.
6. The matter was listed to allow for the author of the Report to introduce it into evidence and be cross-examined. From the line of cross examination the conclusion expressed in the Report and under cross examination was that the Accused presented as normal.
7. Counsel then followed his cross examination with an application that the Report be expunged from the second and replaced with a report from an independent expert (who has not been identified) that Application is opposed by the Prosecutor.
8. Having considered the competing arguments this court comes to the view that the Application is completely without merit. The Report of Dr Muchere Wangombe is a professional opinion. There are no grounds put forward for explaining that opinion. The way for the Defence to challenge an expression of opinion is to present a competing opinion and make submissions on which is preferable on the merits of each report. The Defence has failed to establish any reason why the Report should not be considered at all.
9. In the circumstances the Application is dismissed. The Defendant be and is hereby granted leave to file an assessment of an independent psychiatrist if she so wishes. Counsel for the Defence is also cautioned that any further delay in dealing with the preliminary issues means the question of the Defendant being released on bail or bond is also delayed and her incarceration continues.

Order accordingly.

FARAH S. M. AMIN

JUDGE

SIGNED DATED AND DELIVERED In Voi on this the 4th Day Of October 2018.

In The Presence of :

Court Assistant: Josephat Mavu

Accused: Mr Kinango

Respondent: Ms Anyumba