



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
CRIMINAL CASE NO. 70 OF 2012

Lesit, J.

REPUBLIC.....PROSECUTOR

VERSUS

J M K.....ACCUSED

RULING

1. The accused was convicted of Murder contrary to **section 203** as read with **section 204** of the **Penal Code**. The court entered a finding of guilty but insane under **section 166 (1)** of the **Criminal Procedure**.
2. I have considered that the accused is being treated as a first offender for reason the prosecution did not have any record of previous convictions.
3. The accused was arraigned in court for the very first time on 12th September, 2012. That is a period of four (4) years. During that period, the accused remained in custody throughout his trial.
4. Mrs. Nyamongo defended the accused in this case. In her submissions on mitigating circumstances of the accused, Learned Defence Counsel urged the court to take the following factors into consideration.
 - a) That the accused was aged 47 years old at the time of his arrest;
 - b) That he was in custody throughout his trial.
 - c) That the accused was remorseful for the offence and was seeking leniency and a second chance in life.
 - d) That while in custody pending trial, the accused has been under constant medication and treatment;
 - e) Counsel urged that due to extraction of 3 teeth while in custody, the accused had difficulty chewing food.
 - f) That a family member had written to court pleading for a non-custodial sentence for the accused and had pledged to take care of the accused. Finally that the deceased was a member of the same family as the accused.

5 I have considered submission by the defence counsel and the circumstances alluded to in the same.

6. I have also seen the letter by Peter Mbugua Kaguru dated 11th August, 2016. Having come after the matter was concluded, it is best placed before the Power of Mercy Committee for consideration and for their action.

7. The court has considered the Medical Report by Dr. Kisivuli Consultant Psychiatrist dated 26th October, 2012. In that Report the Doctor indicated that the accused was suffering from Bipolar Mood disorder and further that he had not been on treatment for a period of 20 years prior to that date. He declared him unfit to plead to the charges facing him.

8. I have also considered the evidence adduced by PW9, Dr. Nelly Kitasi, Deputy Director of Medical Services, Ministry of Health based at Mathare Mental Hospital. The doctor came with a file on the accused indicating that the history of his mental history and treatment at the said hospital. The file has record of the accused first treatment at the hospital. This was on 1st July 1987.

9. It shows that the accused was diagnosed with Bipola Mood disorder. He was admitted several times between 1987 and 1990. In 1990 he escaped from the hospital and the matter was reported at Muthaiga Police station.

10. On 26th November 2012, the accused was taken back to the hospital for evaluation under the escort of a prison officer. On evaluation he was found to have gone without treatment for 20 years. He was found to be psychotic and was started on treatment.

11. I have noted that between 1990 when accused escaped from Mathare Hospital, he was not seen again by the hospital until after his arrest for this case. That clearly shows that at the time he committed this offence the accused was psychotic and therefore of unsound mind.

12. The final report from Mathare Hospital dated 10th November, 2014 shows accused is of normal mental status and was fit to plead.

13. Dr. Kitasi informed the court that the accused condition was chronic that it had no cure and further that his mental condition fluctuated from normal to psychotic. The Doctor said he had to remain under medication to avoid the accused condition from relapsing.

14. The court has entered a special finding under **section 166(1)** of the **Criminal Procedure Code** to the effect that the accused is guilty but insane. Having entered that special finding as provided under the same section **subsection (2)** this court is required to report the case for the order of the President at the same time to order for the accused to be kept in custody. Accordingly, I order that the accused be Detained at the Pleasure of the President.

15. I order that the proceedings, judgement and order of this court be typed and certified and the same be placed before the Minister in-charge of the Prison for reporting to the President for his consideration.

DATED, SIGNED AND DELIVERED THIS 6TH DAY OF SEPTEMBER, 2016.

LESIIT, J

JUDGE