



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NYERI
CRIMINAL CASE NO. 14 OF 2013

REPUBLIC.....RESPONDENT

VERSUS

JOSEPH KIGUNDU KIMANI.....ACCUSED/APPLICANT

RULING

On 1st July, 2013, the accused person was charged with murder contrary to **section 203** as read with **section 204** of the **Penal Code**. It was alleged in the particulars in the information constituting the charge that on 1st day of June, 2013 at Kwa Mwaura village in Laikipia County, the accused murdered Veronica Wambui Mugo.

An application for bail pending trial was filed on the accused person's behalf by his counsel on 6th November, 2013 and was supported by the accused person's own affidavit sworn on the same date. The application was opposed by the state and a replying affidavit in that regard was sworn by Corporal David Charo who described himself as the investigating officer in the case.

The application was urged before me on 16th April, 2015 and when I retreated to write the ruling I noted the following from the record:-

1. My predecessor in the matter Justice Wakiaga had on 23rd June, 2014 directed that before a ruling on the application for bail is made a pre-bail report by the probation officer in charge of Laikipia East be submitted to court.
2. The plea to the charge had been taken before Justice Nelson Abuodha who was and still is a judge of the Employment and Labour Relations Court.
3. Before the plea was taken there is no indication on the record that the accused person had been examined by a competent medical expert and certified to be mentally fit to stand trial.

As far as the court's order of 23rd June, 2014 is concerned, the probation officer had not filed his report as at the time the application was urged.

On whether the plea could competently be taken before Justice Nelson Abuodha the Court of Appeal has held in **Criminal Appeal Nos. 44, 45 and 76 of 2014, Karisa Chengo & 3 Others versus Republic**

(2015) eKLR that a judge who has been appointed as a judge of either the Environment and Land Court or the Employment and Labour Relations Court cannot preside over matters reserved for the High Court. The Court was of the view that:-

“In our view it is the court that a judge is appointed to, that determines the kind of jurisdiction that a judge is seized of. In the premises we would agree with the submission that a judge appointed to any of the two specialised courts does not have jurisdiction to sit in courts other than the one he/she was specifically appointed to.”(See page 12 of the judgment).

This decision was followed in **Criminal Appeal No. 27 of 2014, John Kabiro Kimonjo versus Republic** in which the Court of Appeal sitting at Nyeri held that a two-judge bench in which Abuodha, J. sat to hear criminal appeals arising from the magistrates’ court in circumstances similar to those obtaining in **Karisa Chengo & 3 Others versus Republic (supra)** was not properly constituted.

It would not be appropriate to proceed as if these decisions do not exist and subject to the decision of the Supreme Court in which, so I gather, one of these Court of Appeal decisions has been challenged, it is only prudent to take remedial measures at this early stage and have the accused person take the plea afresh before a court whose jurisdiction is not in dispute rather than risk a mistrial.

As to the question of the accused person’s mental status, it appears that in view of the Court of Appeal’s decisions on the jurisdiction of judges of special courts, his plea would still be inconsequential even if he had been subjected to a mental examination before he took his plea.

Taking these findings into consideration, I would direct as follows:-

1. The accused person be escorted to Nyeri Provincial General Hospital for medical examination on whether he is fit to stand trial;
2. Subject to the medical examination report in (1) above, the plea shall be taken afresh;
3. Meanwhile, the deputy registrar is directed to ensure that the court’s order of 23rd June, 2014 is complied with and the requisite report by the probation officer is filed in court forthwith.

This case shall be mentioned on the 10th day of November, 2015 to confirm whether the psychiatrist’s report on the accused person’s mental status has been filed and subject to the psychiatrist’s opinion, the accused person to take the plea afresh. It is so ordered.

Signed, dated and delivered in open court this 9th October, 2015

Ngaah Jairus

JUDGE