



**REPUBLIC OF KENYA**

**High Court at Mombasa**

**Criminal Case 14 of 2010**

**REPUBLIC ..... RESPONDENT**

**V**

**NYAWA MWAJOWA ..... ACCUSED**

**SENTENCING NOTES**

The accused had been charged with Murder contrary to Section 203 as read with Section 204 Penal Code. The trial Court had taken cognizance of the fact that the Accused did not appear to be mentally sound and pursuant to provisions of Section 162(2) of the Criminal Procedure Code postponed the proceedings and ordered for a medical report.

A medical report by a Consultant Psychiatrist Dr. Mahero was availed to the Court. The recommendation therein was that Accused had suffered mental illness on account of his abnormal belief and his recollection of his behaviour. He was of the view that because of his mental state findings he was in remission and could stand trial.

The facts of the case were read to the Accused after having been explained the seriousness of the charges facing him in Swahili language which language he said he understood and he said that all the facts were true.

He was convicted on his own plea of guilty and was treated as a first offender.

A pre-sentence report was ordered for. In this report Senior Probation Officer Mr. Karanja noted in his concluding remarks that the Accused had a long history of mental illness that dated back to when he was

in lower primary school. His family was not able to help him owing to their belief in Witchcraft. He had suffered through rituals believed to have powers to heal him. He was of the view that he might not benefit if handed a sentence that would see him back to his community.

Section 167(1) of the Criminal Procedure Code provides-

**“If the Accused though not insane cannot be made to understand the proceedings-**

**(b) In cases tried by the High Court the Court shall try the case and at the close thereof shall either acquit the Accused person or, if satisfied that the evidence would satisfy a conviction, shall order that the Accused be detained during the Presidents pleasure.”**

I am satisfied that the Accused still exhibits flashes of mental instability. I do agree with the findings of the Probation Officer that placing him on Probation may not benefit him as he would be taken back to witchcraft rituals by his family.

I am therefore persuaded that the best option would be to detain him during the Presidents pleasure which I accordingly order.

Pursuant to Section 167(4) of the Criminal Procedure Code I further order that copies of the notes of evidence taken at the trial, and my report which is contained in my sentencing notes be forwarded to the Minister/Cabinet Secretary of the Ministry for the time being responsible for Prisons.

**Ruling read and delivered in open Court this 8<sup>th</sup> day of May, 2013**

**M. MUYA**

**JUDGE**

**In the presence of:-**

**Mr. Dzumo – State Counsel**

**Counsel for the Accused**

**Court clerk – Mr. Musundi**