



REPUBLIC OF KENYA

IN THE HIGH OF KENYA AT MOMBASA

Criminal Case 7 of 2012

REPUBLIC PROSECUTOR

- VERSUS -

DENNIS MGUTE KAFANI ACCUSED

RULING

The accused herein was arraigned in Court on a charge of **MURDER** contrary to Section 203 as read with Section 204 of the Penal Code, Cap. 63 of the Laws of Kenya. As per the law he could not plead to the charge on the first appearance on 13.2.2012. The plea was deferred and an order was issued that the accused be assigned a defence Counsel and be taken for a psychiatrist examination. That was done. He was assigned a counsel Odhiang advocate, now on record. The medical report dated 10th May 2012, signed by Dr. C.M. Mwangombe M. MED, indicates that the accused is fit to plead. The case was fixed for hearing on the 18th and 19th day of April 2012. The record indicates the defence counsel was on record on the 24th February 2012 and on 28th February 2012 when the hearing dates were given and onward. On the 18th April 2012, the defence was ready to proceed and so was the State. However, the Judge was not sitting. The case was further fixed for hearing on 19th April 2012, the case did not proceed allegedly because a psychiatrist report had not been received. The Court ordered the OCS Shimo la Tewa to facilitate the same. I think the that order was misinformed, because there was a Psychiatrist report given to the Court on 28th February, 2012 and a plea of not guilty entered. Be it as it were the matter was set for hearing on the 30th May 2012 but on that date, the accused was not produced. It is noteworthy that this was the third hearing date set, witnesses had been in Court on all these three occasions. They were ready and were not heard. The next hearing date was set for 6th June 2012, the Counsel raised an issue that, the accused took a plea when a Psychiatrist report had not been received. I noted the same and I read out the information to the accused afresh. He took a plea of not guilty. I entered the same on record. I fixed the matter for hearing on 18th and 19th of July 2012. On 18th July 2012 the defence applied that, the accused be examined at Port Reitz hospital because on several occasions, the Counsel has tried to communicate to him with difficulty and the parents have indicated he has a history of mental instability. The State had no objection of the same. I allowed the defence request for a second medical examination by a Psychiatrist. Again, the witnesses were paid the travel expenses. The matter was set for mention on the 5/9/2012 but the accused was not produced, and I issued a production order. On 6/9/2012 the defence has raised the issue of inability to avail the accused for the 2nd Psychiatrist report. She argues that, the accused is in custody and they have no access to him and that the accused is entitled to a fair trial. Therefore, if the defence feel there is need for second report then it ought to be availed and it would be improper to throw the expenses at the accused. Upon inquiry from the counsel as to whether there are any medical documents to prove previous treatment of the accused for a mental instability problem, the Counsel stated, he was being treated in a “traditional manner.” I have tried to talk to the accused but he

has not answered and opted to keep quiet.

In my considered opinion I find that, first and foremost, the defence Counsel has indicated to the Court on several occasions when the matter came for hearing they were ready. Therefore the request for a second Psychiatrist report may find no subsequent basis. Secondly, there is a medical report the accused is ready to plead. No other report or medical document to support a contrary opinion has been granted. Thirdly, the issue of inability to access the accused, because he is held at Shimo la Tewa Prison Remand does not arise, an order to the prison authority to facilitate the travel of the suspect is adequate and can be made. Finally, if it is the defence that requires the 2nd medical report, then with due respect, they should pay for it. The Court already has an unchallenged report.

In conclusion I find the basis for a second medical report is not established and the same should be availed by the defence on their request and their expense.

Court – Hearing on the 3rd October 2012.

Dated, delivered and signed in open court this 7th September 2012.

G. NZIOKA

JUDGE

7TH SEPTEMBER 2012

In the presence of:

Mr. Gioche for the State

Odhiang for the accused

Benta – Court clerk

G.NZIOKA

JUDGE

7.9.2012