



**Mbithi v Republic (Miscellaneous Criminal Application E080 of 2024)
[2025] KEHC 15424 (KLR) (29 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 15424 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT EMBU
MISCELLANEOUS CRIMINAL APPLICATION E080 OF 2024
RM MWONGO, J
OCTOBER 29, 2025**

BETWEEN

AGNES NDEGI MBITHI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. This Miscellaneous Criminal Application for Review was filed on 8th November, 2024. It exemplifies how backlogs may easily build up in a Court Station. It also reflects a sad tale neglect.
2. By her Supporting Affidavit, the applicant asserts that she was charged and tried in Embu CM Criminal Case No. 2525 of 2000 for the offence of manslaughter. She was found guilty but insane on 19th February, 2006. Accordingly, in pursuance of Sections 160- 167 of the CPC, she was detained to serve at the President’s pleasure.
3. The lower court file was called for on numerous occasions but could not be traced. Eventually, it turned out that the said file was duly destroyed under the provisions of the Disposal of Records Act and Rules. A Gazette notice No.5845 dated 5th June, 2018 and published in the Kenya Gazette on 14th June, 2018 was availed showing that Criminal cases for the years 1973 – 2012 were advertised for destruction.
4. Pursuant to the said Gazette Notice Criminal Case No.2525 of 2000 was listed as having been disposed of. A “Certificate of Destruction” was issued by the authorized destruction agents Kamongo Waste Paper Ltd, which states:

“I certify (sic) that all methods of destruction are in compliance with international recognized standards on waste paper recycling through industrial shredder as well as the hydro pulper dated 26th February, 2019..”



5. Consequent to the destruction by shredding for recycling the lower court file dissipated. It may be the base on which the daily newspaper was printed upon as fresh newsprint paper.
6. In other words, no element of the information on the applicant's application can now be verified or reviewed.
7. However, the Court obtained a record from Mathari National Teaching and Referral Hospital dated 11th March 2024 disclosing a Certificate of Capability to make Defence (See 163) (11) that indicates as follows, inter alia:

- “ 1. 1. Ref SPM, Court CRC No.2525 of 2000
2. Crime Committed - Manslaughter
3. Police File – Nil
4. R vs Agnes Ndegi Mbiti

I hereby certify that the above person committed to my care by SPM's Court Embu 19th February, 2004 in my opinion has now become capable of making her defence...

Signed: Dr. Olando for Medical Superintendent”

8. Further, a Medical Report from Embu County Government Level 5 Hospital referencing Agnes Ndegi Mbiti and dated 3 March, 2025 indicates inter alia as follows:

“ She (remandee) was previously seen at Mathari Hospital for 16 years after she was convicted for the same crime....

Conclusion

She has a 30 - year history of Mental illness. We have started her on treatment last year and she is currently assessed as “fit to plead”

9. These documents corroborate the applicants story told in her application and affidavit.
10. In her motion, she has sought an order for her original trial records to be brought up so that the Court can give appropriate orders in line with the decision in High Court Petition No.226 of 2020 Isaac Ndegwa Kimaru & 17 others.
11. Further, she asserts that in the Isaac Ndegwa Kimaru Case, Mrima J held that it was unconstitutional for persons found guilty but insane to be detained under the President's pleasure. As such, that the proper order is for the person to be arraigned before the Court for it to make an appropriate order and directions taking into account the detained person's mental status.
12. As already stated, the applicant's Court records have been destroyed and are unavailable. However, the Court was able to retrieve some of the medical reports of the applicant, as already pointed out.
13. In addition, a Probation Officer's Report was obtained which gives substantial information concerning the applicant and her background. Highlighted information is as follows:

“ Personal Background

The patient was allegedly born 55 years ago. Upon attaining school going age she was enrolled Machang'a Primary School where she schooled up to class three and dropped out



because of financial constraints as the father was unwell for a long time while the mother became insane. She later started showing signs of mental illness like her mother and was placed under medication which she grudgingly took. When she attained the age of maturity, she got married to one Genesio Munyua. They were blessed with 2 sons namely Kennedy Gitonga a casual worker and Samwel Kariuki also a casual worker within their village. When they were young the mother to the subject abandoned them at the ages four and two years respectively. She started living a transitory life with no known fixed abode. She would lapse because of not taking her medication and be taken to Mathari Hospital by the uncle who was by then a High School teacher now retired and farming living alone at home as the children have left the nest and the wife is working away in Igembe Meru.

Offender's Previous Criminal Records

The inquiry established that the offender has no records but is known to be extremely violent.

Circumstances of the offence

The circumstances of the offence are that, due to her mental state, she had left home and settled at Gachoka trading Centre. She allegedly killed her landlord claiming the landlord had wanted to rape her. According to the relatives it was alleged that the patient murdered her landlord after an altercation.”

14. The Probation Report concludes with the Community's Attitude towards the offender and recommendations as follows:

“Community attitude towards the offender and the offence

They opined that she should be retained at the Mental facility because they believe she will go hungry, lack support and also refuse to adhere to her medication. They have been taken through the same before and they feel that Ndegi is safer at the hospital.

Conclusion

After conducting this social inquiry, we established that the patient is 55 years of age was married and separated. She lived a solitary life. She schooled to around class three and dropped out due to financial constraints and after started showing signs of mental challenges. Since then, she has engaged in casual jobs besides farming. The victim in this case was the landlord. The family has a history of mental challenges starting with the mother who had similar problems. Thus, the condition can be described as hereditary. A son to the sister is mentally challenged and so is the daughter to another sister and her child. She has two sons whom she has never bonded with because she left them when they were four years and two years and were left to their father who was elderly and sickly and has since died. They have refused to offer any form of help to her should she be discharged and a visit to the homestead exhibits abject poverty, neglect and utter dilapidation. A cousin to her late husband has taken over the house that her husband lived in and it has no door and it is tiny. The sons' houses are too falling off and deserted. All her sisters have flatly refused to take her in and the uncle Jeremiah also refused to take her and stated that he is now retired and has little to offer. He lives alone as his children have left the nest and the wife lives and teaches in Igembe Meru County. A nephew has a young family and lives on rented premises. From the foregoing information, no family member was or is keen to take the burden of caring or accommodating the patient.



Recommendations

From the aforementioned, we wish to recommend that Agnes Ndegi Mbithi be considered for placement into a home for the elderly.

15. The Probation Officer's report is rich with relevant information, and she is commended for the depth of detail. In addition, the report has made extremely pertinent observations and recommendations that have given the Court very appropriate guidance. Such reports are to be encouraged and their importance cannot be over emphasized.
16. I have carefully considered the material before me. I have also considered the holding in Isaac Ndegwa Kimaru & 17 others H.C Pet No.226 of 2020. Under Paragraph 148 iii) and (iv) of its judgment, the Court made the following findings:
 - “ iii)) An accused who is found to be unfit to stand trial or to continue participating in a criminal trial due to mental challenges or an accused who is tried and convicted of a criminal offence, but was found insane at the time of committing the crime is a person with disability and ought to be accorded the necessary protection and assistance required under *the Constitution* and the law.
 - iv) The persons who are detained in prison facilities in Kenya under the President's pleasure ought to be arraigned before the Courts which committed them and the Courts must take charge of those persons and make appropriate orders and directions.
17. Under Paragraph 152 (h), (i) and (j) of its judgment, the following directives were then meted out thus:-
 - h) An order hereby issues that any prison facility in Kenya holding any person with mental challenges facing a criminal trial or who has been tried and a special finding made that such a person was 'guilty' but insane' and be detainee at the President's pleasure shall forthwith make arrangements and arraign such a person before the Court that committed the person to the prison facility. [Emphasis added].
 - i. Once any person with mental challenges facing a criminal trial or who has been tried and a special finding made that such a person was 'guilty but insane' is arraigned before Court pursuant to order (h) above, the Court shall make appropriate orders and directions upon taking into account the mental status of the accused and the period the accused has been detained in prison at the President's pleasure.
 - j) In the event the prison facility is unable to arraign such a person before Court as ordered in order (h) above, the facility shall immediately so inform the Court and the Court shall make appropriate orders and directions as it deems fit.

Conclusions and Disposition

17. In light of all the foregoing, am persuaded that the best option available in the circumstances is for the accused to be placed in a home for the elderly. There, she will be safe and will not face the type of neglect and abandonment she faced when she was a child. I hereby make that order.



18. In addition, I direct that the Probation Officer shall facilitate the identification of such home and assist to settle the offender therein.

19. Orders accordingly.

DELIVERED, DATED AND SIGNED AT EMBU HIGH COURT THIS 29TH DAY OF OCTOBER, 2025.

.....

R. MWONGO

JUDGE

Delivered in the presence of:

Applicant present in Court

Ms. Nyika for the Respondent

Francis Munyao - Court Assistant

