



REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA AT MOMBASA COUNTY  
COURT NAME: MOMBASA HIGH COURT  
CASE NUMBER: HCCRC/E015/2024  
REPUBLIC VS ALI GATANA

JUDGMENT

Background

1. The Accused, Ali Abdalla Gatana, was charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code, the particulars being that on the 29th day of May 2024, at Likoni within Mombasa County, he murdered Sira Bakari Kula and Nviroto Kassim Zani.  
2. He pleaded not guilty, and during the proceedings, the central question that emerged was the accused's mental state at the time of the killings. Evidence showed a history of psychiatric illness and drug-induced psychosis. HIS family members revealed that he was a normal, well-behaved, and promising young man during his childhood and early schooling years. However, during his secondary school, in Form Four, he experimented with drugs, and thereafter, his mental and behavioral health began to deteriorate. The consequences were extremely tragic to the entire family, but especially to PW1 WHO LOST BOTH HIS ELDERLY AND SICKLY MOTHER AND HIS WIFE ON THE SAME DAY,

Prosecution Evidence

4. The prosecution called eight (8) witnesses. Eyewitnesses testified that the accused was seen stabbing the two deceased persons and later fleeing while holding the knife.  
5. The post-mortem findings confirmed that both deceased persons died of multiple stab wounds inflicted by a sharp object.  
6. The accused's father, Abdalla Bakari Kula, and aunt, Asha Bakari Kula, testified that the accused had SINE THE YEAR 2022 struggled with mental instability and had undergone several psychiatric admissions. They described his condition before the incident as confused, agitated, and suicidal.  
7. Medical evidence from Dr. Ahlaam Mohamed and Dr. Janbib Mohamed confirmed that the accused had been diagnosed with drug-induced psychosis. At first, he was found unfit to plead, but



was later declared fit after treatment, though his condition was noted to recur upon relapse.

#### Defence Evidence

7. In his sworn defence, the accused stated that he had no recollection of the events of 29th May 2024. He denied any grudge against the deceased and relied on medical records indicating a long-standing psychotic disorder.

8. His mother, Magdaline Wanjiku, corroborated this evidence, stating that her son had previously been hospitalized for psychiatric illness but that treatment had not yielded permanent recovery, as he often relapsed into violent and psychotic behavior.

#### Issues for Determination

The issues for determination are:

1. Whether the prosecution proved the act of killing beyond reasonable doubt;
2. Whether the accused possessed malice aforethought;
3. Whether the defence of insanity under Section 12 of the Penal Code is applicable;
4. The constitutionality and application of Section 166 of the Criminal Procedure Code in light of the special finding.

#### Analysis and Determination

##### (1) Fact and Cause of Death

9. It is undisputed that both Sira Bakari Kula and Nviroto Kassim Zani died from multiple stab wounds. The post-mortem reports confirm the cause of death. This element is proved beyond reasonable doubt.

##### (2) Whether the Accused Caused the Deaths

10. The eyewitness testimony, especially that of BINTI MUSA SAID, PW2 coupled with circumstantial evidence, leaves no doubt that the accused was the person who inflicted the fatal injuries. The second element of the offence is therefore also proved.

##### (3) Whether the Accused had Malice Aforethought

11. The question is whether the accused was capable of forming the requisite criminal intent at the material time. The evidence before this Court overwhelmingly shows that the accused was suffering from a mental disorder—specifically, drug-induced psychosis.

12. Witnesses described him as incoherent, suicidal, and delusional before the incident. The medical reports corroborate this, showing a recurring psychotic illness that impaired his perception of reality.

13. Under Section 12 of the Penal Code, a person is not criminally responsible for an act if, by reason of a disease affecting the mind, he was incapable of understanding the nature or wrongfulness of his act.

14. Applying the principles in *McNaughten's Case* (1843) and *Leonard Mwangemi Munyasia v Republic* [2015] eKLR, this Court finds that the accused, at the time of the offence, lacked the capacity to appreciate the nature and consequences of his actions.

15. The decision in *Wakesho v Republic* [1989] KLR 424 further clarifies that where an accused person is found to have committed the act but was insane at the time, the court must enter a special finding of "Guilty but Insane" under Section 166(1) of the CPC, and order detention at the President's Pleasure. The finding does not constitute an acquittal, but acknowledges that criminal responsibility is displaced by mental incapacity.

16. I therefore find, consistent with *Wakesho*, that the accused did commit the act of killing the two deceased persons but was, at that moment, legally insane and incapable of forming malice aforethought.



(4) Constitutionality of Section 166 CPC

17. The Court is alive to the constitutional debate surrounding Section 166 of the Criminal Procedure Code. The section has been criticized as inconsistent with Articles 29(f) and 51(1) of the Constitution, which guarantee the right to liberty and protection from indefinite detention.

18. Several High Court decisions have noted that detention “at the President’s Pleasure” places the fate of a mentally ill offender at the discretion of the Executive, contrary to the principle of separation of powers and the right to fair administrative action. It also lacks periodic judicial review safeguards.

19. However, this Court notes that until the law is amended or AND THE BEST APPROACH SETTLED by the Court of Appeal or Supreme Court, the provision remains in force and binding under Article 2(4) of the Constitution.

20. In this particular case, the medical reports and testimony from close relatives show that despite prior treatment and rehabilitation, the accused’s condition has not improved and has now resulted in a HORRENDOUS double homicide.

21. The accused continues to pose a serious danger to himself and the public. His relapse history, violent outbursts, and unresponsiveness to prior treatment make community release medically and socially untenable at this stage.

22. The Court therefore finds that continued secure psychiatric detention is justified not as punishment, but as a protective and therapeutic measure in the public interest.

Finding

23. In the result, the Court enters a special finding under Section 166(1) of the Criminal Procedure Code that the accused, ALI ABDALLA GATANA, is GUILTY BUT INSANE at the time of committing the offence.

Orders

24. Pursuant to Section 166(2) of the Criminal Procedure Code, the accused shall be detained in a mental health facility under the President’s Pleasure, for continued treatment and monitoring.

25. The Officer in Charge, Shimo la Tewa Prison GK MAXIMUM, shall liaise with the Cabinet Secretary for Correctional Services to arrange for the accused’s transfer to an appropriate psychiatric institution.

26. The Deputy Registrar shall notify the President of this special finding in accordance with Section 166(3) of the CPC.

27. The Court further recommends that the Cabinet Secretary ensures periodic medical reviews of the accused’s condition, and that any future discharge shall only be made upon a medical certification of full mental recovery and with judicial sanction.

Dated, signed and delivered in Open Court/online through MS TEAMS,  
this .....23RD..... day of OCTOBER.....2025

HON. LADY JUSTICE W. K. MICHENI  
JUDGE

In the presence of:  
THE ACCUSED PERSON AND MR WAZIRI ADVOCATE  
MR NGIRI FOR THE STATE  
MS BEBOR COURT ASSISTANT  
HON. LADY JUSTICE W. K. MICHENI



JUDGE

SIGNED BY/FOR:  
HON. LADY JUSTICE WENDY MICHENI



THE JUDICIARY OF KENYA.  
MOMBASA HIGH COURT  
HIGH COURT CRIMINAL  
DATE: 2025-10-27 14:58:01

