

**IN THE COURT OF APPEAL
AT NYERI**

(CORAM: M'INOTI, KANTAI & ARONI,

JJ.A.) CRIMINAL APPEAL NO. 147 OF

2019

BETWEEN

LAWRENCE GITHINJI MUREITHI.....APPELLANT

AND

REPUBLIC.....RESPONDENT

*(Appeal from the judgment of the High Court of Kenya at
Nanyuki (Kasango, J.) dated 17th April 2018*

in

HCCR.C No. 23 OF 2015)

JUDGMENT OF THE

COURT

1. This is a first appeal from the judgment of the **High Court** of **Kenya** at **Nanyuki (Kasango, J.)** dated 17th April 2018. The **appellant, Lawrence Githinji Mureithi** was charged before that court with the offence of murder contrary to **section 203** as read with **section 204** of the **Penal Code**. The information stated that on 24th July 2016 at Matunda

Village in Laikipia County, the appellant murdered **John Mureithi Ngahu**, who was his father.

2. After hearing the case, the High Court concluded as follows:

“20. The prosecution has, in this court’s view, proved beyond reasonable doubt that Lawrence hit the deceased severally on the head, which injuries caused his death. I have however found in examining the medical reports, and bearing in mind what PW3 said about Lawrence, that Lawrence was suffering from decease which affected his mind and consequently was incapable of understanding what he was doing when he severally hit his father on the head. (See Republic v. Philemon Chema [2014] eKLR).

21. Consequently I hereby make a special finding that Lawrence is guilty of murder as charged but he was insane when he committed that murder.

22. I hereby direct the Deputy Registrar of this court to report this case for the order of HE the President in accordance with the provisions of section 166 of the Criminal Procedure Code. In the meanwhile Lawrence Githinji Mureithi shall be kept in custody at Nanyuki G. K. Prison.”

3. The appellant was aggrieved and preferred the present appeal, where he takes issue with the judgment of the High Court for finding him to be of unsound mind and committing him to prison at the order of the President instead of committing him to a mental hospital for treatment. In support of the appeal, the appellant’s learned counsel, **Mr. Gikonyo** relied on written submissions dated 14th May 2025.

Counsel cited the decision of this Court in **RWB v. Republic** [2021] KECA 329 (KLR)

where the Court held that persons who are mentally ill require

treatment rather than punishment.

4. Counsel also relied on the decision of this Court in **Wakesho**

v. Republic [2021] KECA 223 (KLR) where the Court found **section 166** of the **Criminal Procedure Code** to be paradoxical and in urgent need of reform. The reasons put forth for reform include the contradiction inherent in finding guilty a person, who by reason of unsoundness of mind, does not have a blameworthy mind; denial of the court of the discretion to impose suitable measures depending on the circumstances of each case; and breach of the right to fair trial when there is doubt whether the accused person fully understands the charge and is able to effectively participate in the proceedings.

5. For those reasons, counsel urge the Court to set aside the order for the appellant to be held at the order of the president and substitute therefor an order directing him to be committed to a mental hospital for treatment.
6. The respondent conceded the appeal in written submissions

dated 10th May 2025. At the hearing of the appeal, **Mr.**

Naulikha, learned counsel reiterated that the respondent was

conceding the appeal as regards committal of the appellant.

7. We have carefully considered the appeal. The evidence on record indicates that the appellant had a history of mental illness and that indeed, the High Court found that at the material time, he was suffering from a disease which affected his mind and made him incapable of understanding what he was doing when he attacked his father. In those circumstances, the value of locking him up in prison is not readily apparent.
8. The decisions of this Court cited by the appellant's counsel speak to the judicial disquiet that **section 166** of the Criminal Procedure Code has evoked, not limited to its doubtful constitutionality, implications for separation of powers, and relevance in contemporary times. In addition to those decisions, we would add these other cases, namely, **SKK v. Republic** [2023] KECA 1088 (KLR); **MMK v. Republic** [2023] KECA 1395 (KLR), and **KLA v. Republic** [2024] KECA 1176 (KLR).

9. Taking all the foregoing into account, the best order that commends itself to us is to allow this appeal as regards

sentence and direct that the appellant shall be taken for treatment in a mental hospital until such time as the psychiatrist in charge shall certify that he is well enough to be discharged, and that he is not a danger to himself or to the society. It is so ordered.

Dated and delivered at Nyeri this 28th day of November, 2025.

K. M'INOTI

.....
JUDGE OF APPEAL

S. ole KANTAI

.....
JUDGE OF APPEAL

A. ALI-ARONI

.....
JUDGE OF APPEAL

*I certify that this is
a true copy of the
original*

Signed
DEPUTY REGISTRAR