

Republic Of Kenya

In The High Court of Kenya at Makueni

Criminal Case No. 27 Of 2019

Republic vs Frederick Mbindyo Mulei

### Disposition

According to the records the accused was born on 9<sup>th</sup> of October 2002 on the 2<sup>nd</sup> of October 2019 he was charged with murder contrary to section 203 as read with section 204 the penal code. He pleaded not guilty and after a full trial before the honorable Ong'udi J he was found guilty of the offense of accessory after the fact of murder contrary to section 222 of the penal code. The learned Judge convicted him on the 19<sup>th</sup> of May 2021 although the judgment was delivered on 20 29<sup>th</sup> of June 2021 by the Honorable Dulu J.

When I took over the matter on the 30<sup>th</sup> of May 2023, I learnt that the offender had escaped from Machakos remand home when the matter was spending sentence. Considering that there had been a pre bail report I directed that Probation and After Care Services to assist the investigating officer to trace

the subject. He was finally found at his home and arrested and brought before Court. By now he was 21 years old.

I ordered for a fresh presentence report. It revealed that he was suffering from a mental condition/ illness .

Having this information, on the 2<sup>nd</sup> of April 2025 I directed that I had been informed that the subject had an existing mental health condition and pursuant to the Sentencing Policy Guidelines it was required that before any sentence I obtain a recommendation from the psychiatrist. I made orders that the subject be escorted to the psychiatrist at Makueni Referral Hospital for an assessment and a diagnosis of his mental health condition or illness, and a recommendation be made as to the appropriate mode of dealing with him.

I received a recommendation dated 6<sup>th</sup> of May 2025 on the 29<sup>th</sup> of May 2025 from the Psychiatrist . He had recommended that the offender be admitted to Mathari National Teaching & Referral Hospital for treatment. He was escorted to the hospital where he was admitted on 8<sup>th</sup> September 2025.

According to the report, he had suicidal ideation, believed that there were people planning to kill him and he would kill himself

before they did. As per the report dated 5<sup>th</sup> November 2025, on the 27<sup>th</sup> of October 2025, he was found fit for discharge and capable of pleading in court.

He had been diagnosed with schizophrenia and was started on treatment.

I requested for another presentence report Which indicated that as at the time of the of interview there was great improvement and he cooperated he was able to understand the two offenses and also the offense of escaping from home he stated that he was ready and willing to reunite with his family.

His father expressed willingness and readiness to accept the offender back home and to support him fully. He pointed out that the father had visited him in custody and found that he had greatly improved from his previous mental status and the family was ready to provide close monitoring and ensure that he took his medication as prescribed by the doctor. The local administration stated that the offender was not a threat to the community for as long as the family accepted his mental condition and supported him by ensuring that he took his medication and attended to his medical needs .

The probation office stated that if the offender was placed on a non-custodial sentence they would closely monitor him through regular reporting to their office ,they would provide guidance and counseling on anger management , on negative peers, on peer pressure ,on drugs and substance abuse: they would also link him to skills training and job opportunities; that their office would work closely with the Makueni County Referral Hospital for his medication and collaborate with the Musalala local administration for close monitoring and supervision. The PACS office also committed to conduct quarterly case conferencing with family members on review of supervision progress. It was therefore recommended that the offender be placed on probation supervision for 3 years considering that he had committed the offence when he was a child.

**s. 222 of the Penal Code provides;**

***Accessory after the fact to murder***

*Any person who becomes an accessory after the fact to murder is guilty of a felony and is liable to **imprisonment for life.***

The sentencing Policy Guidelines 2023 state as follows:

*Sentencing offenders with a mental disorder*

*3.4.22 For all other cases that do not fall within Sections 166 or 167, where it appears that the offender is or appears to be suffering from a mental disorder at the time of sentencing, the court must obtain a medical report before passing a sentence unless the court considers it unnecessary to do so e.g., if existing, reliable and up to date information is available. Where conditions are progressive, the impact of the sentence may also require expert opinion particularly where custody is being considered.*

*3.4.23 In determining the sentence, courts will naturally assess culpability – see the section on GATS in Part V. Culpability may be reduced if at the time of the offence the offender was suffering from a mental disorder and provided that there is a sufficient connection between the offender’s disorder, and the actual offending behaviour. Whilst expert testimony can be very helpful on this issue, the court is not bound to follow that opinion if there are compelling reasons to set it aside in which case the court must state those reasons. If the court considers that culpability should be reduced, it must provide the reasons*

*and the extent of that reduction. Relevant factors in this context may include but are not limited to: i. ii. iii. Whether at the time of the offence, the offender's disorder causes them to behave in a disinhibited way. Where an offender was failing to take medication prescribed for the disorder at the time of the offence, the court must consider the extent to which that failure was wilful or arose as a result of the offender's own lack of insight into their mental disorder. Was the offender 'self-medicating' with alcohol or non-prescribed or illegal drugs at the time and did that make it worse? If so, the court should consider the extent to which the offender was aware that would be the effect.*

*3.4.24 If the court considers a custodial sentence is merited, the court must consider the impact of the mental disorder when assessing the length of sentence. This is because the sentence may exacerbate the effects of the disorder. When a custodial sentence is passed, the report and any other relevant information concerning the offenders physical and mental health should be forwarded*

*to the prison to ensure they have the appropriate information and can ensure the welfare of the offender.*

*3.4.25 Courts must take particular care to ensure that the offender understands the sentence and what will happen if they reoffend or breach the terms of community service, probation, or suspended sentence order.*

Guided by the above SPGs, I have taken into account all the circumstances of this case. I have considered that the offender spent time in Remand Custody from 2019 when he was arrested to November 2021 when he and others escaped from the Remand Home. Since his re arrest he has been in custody as well.

I am persuaded that a non-custodial supervision order would assist in his rehabilitation and support his treatment within the family set up.

I order therefor that he be placed on Probation Supervision for three years on condition that he understands the implications.

Dated, signed and delivered this 19<sup>th</sup> December 2025

Mumbua T Matheka

Judge

CA Chrispol

Mr. Hassan for the Offender