



**Republic v TGW (Criminal Case E002 of 2022)  
[2026] KEHC 1301 (KLR) (11 February 2026) (Sentence)**

Neutral citation: [2026] KEHC 1301 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT EMBU  
CRIMINAL CASE E002 OF 2022  
RM MWONGO, J  
FEBRUARY 11, 2026**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**TGW ..... ACCUSED**

**SENTENCE**

**Background**

1. The accused in this case was found guilty but insane. Consequently, the court delivered a ruling dated 19<sup>th</sup> February 2025 in which it withheld pronouncement of a sentence until a further comprehensive mental examination had been conducted. The Court ordered as follows:

“ 18 In light thereof, the prudent thing is for this Court to order and it is hereby so ordered, that the accused be held at Mathari National Hospital for a period of 3 months for observation and treatment. This is because the Psychiatric Report of 22/1/2025 indicates that the offender, despite being on treatment for mental illness, has an otherwise alert, normal and oriented mental status with good judgment and that he is fit to plead.

19. Upon his return with a medical report, the Court will be able to determine an appropriate sentence based on the report of the offender’s treatment, and any recommendations on the mental state. The matter will be mentioned at the end of four (4) months from today when a comprehensive mental examination report and opinion with recommendations from the head of the Mathari Mental Hospital is availed together with the accused’s medical records of the treatment offered.



20. If at the end of this period the court is of the view that the offender's medical condition can be managed, the Court will decide on the nature of the sentence to impose. At present the Court is of the view that a custodial sentence is appropriate.
  21. If at the end of this period the court thinks that the offender's mental state cannot be contained in Prison, or that he will be a hazard to other inmates and himself, the offender may be held at a mental institution until such time as his mental condition will be manageable.
  22. The offender shall be brought before Court after four (4) months with a comprehensive medical/mental report from Mathari Mental Hospital for final sentence.
  23. Orders accordingly.”
2. On 13<sup>th</sup> October 2025, the court ordered that the accused attends Thika Level 5 Hospital and Embu Level 5 Hospital for comprehensive mental assessments to assist the court in its determination of sentence. It ordered that the comprehensive mental assessment reports be availed in court within 30 days. The medical reports were availed as ordered.

### **Submissions on sentencing**

3. Parties were directed to make submissions on the reports to assist the court reach an apt determination on the offender's sentence.
4. Counsel for the accused made submissions in reference to Section 9 of the Penal Code which absolves liability on anyone who, at the time of occurrence of the crime, was deprived of independent judgment on account of insanity. He also pointed to Section 11 of the Penal code and argued that a person is presumed to be of sound mind until proved otherwise. That in this case, the accused is a known person of unsound mind. He also referred to the testimony of PW5 during the hearing as well as the mental reports from Thika and Embu Level 5 Hospitals.
5. He stated that following the accused's conviction under section 166(1) of the Criminal Procedure Code, he was placed in prison for more than 3 years. He prayed that since there is sufficient proof that the accused is insane, the time already spent in custody be found to be sufficient punishment. He relied on the case of Leonard Mwangemi Munyasia v Republic [2015] KECA 382 (KLR).
6. The respondent relied on the mental assessment reports on record which are dated 19<sup>th</sup> January 2022 and 03<sup>rd</sup> November 2025 from County Government of Kiambu and 05<sup>th</sup> November 2025 and 22<sup>nd</sup> January 2025 from Embu Level 5 Hospital. In all these reports, the accused was found to be normal mentally. It also relied on the Probation Officer's Report where a section of the accused's family and the community did not think that he had a mental illness, and that he was feigning mental illness. It was submitted that the accused had had repeated outbursts and yet he is of sound mental health. It urged the court to pass a just sentence that took into account the accused's mental relapses.

### **The Mental Assessment Reports**

7. The mental assessment report authored by Dr. J.N. Thuo dated 05<sup>th</sup> November 2025 details that the accused cannot remember the occurrences of the night of the incident. That he has a history of recurrent violent behavior which last 1 week at a time, and he is a patient at the psychiatric clinic of the facility, undergoing treatment for temporal lobe epilepsy. Of significant importance, the Report



concludes that the violent act leading to the killing of the deceased occurred during a period of seizure related to his altered mental state and not to regular criminal behavior.

8. The Report further states that the offender has been kept on medication, and that so long as the medication is administered timely, the seizures would remain under control and the accused would not exhibit aggressive behavior. The doctor gave his professional opinion that there is a well-established connection between epilepsy and violent behavior and this a medical construct that should be appreciated. It is with this knowledge that the accused's behavior on the night of the incident can be explained as having occurred without his conscious awareness or intent.
9. Dr. Ng'ang'a G. authored a report dated 03<sup>rd</sup> November 2025. In it, he observed that the accused did not exhibit any abnormal traits at the time of examination but he was diagnosed with schizophrenia disorder. The report noted that the condition is chronic and that the offender is currently on medication though he is likely to suffer relapse episodes. In the doctor's opinion, the accused requires continued treatment including medication, counselling and psychotherapy.

### **Conclusions and Disposition**

10. I have carefully considered all the medical reports so far received by the court on the offender. Based on the pre-conviction reports, the court has already found that the accused is guilty but insane. The post-conviction mental reports clearly indicate that the offender must continue to be under medication.
11. These mental examination reports indicate that the accused's mental condition is chronic with high chances of relapse which presents as violent fits. The offender requires continuous medical intervention throughout to manage the condition. This means that there is a high likelihood of the accused being a danger to himself and to his family and the community around him at any given time because the fitful mental condition could relapse at any time. It is also evident from the latter reports that the accused was belabored by a mental illness at the time of the incident itself.
12. Section 12 of the Penal Code absolves the criminal liability of a person who is insane at the time of committing the offence. It states:

“ A person is not criminally responsible for an act or omission if at the time of doing the act or making the omission he is through any disease affecting his mind incapable of understanding what he is doing, or of knowing that he ought not to do the act or make the omission; but a person may be criminally responsible for an act or omission, although his mind is affected by disease, if such disease does not in fact produce upon his mind one or other of the effects above mentioned in reference to that act or omission.” [Emphasis added]
13. Dr. Ng'anga's report of 3<sup>rd</sup> November, 2025 concludes that the offender “is currently stable because he is on medication. However, this disorder is chronic and relapsing that is, if he is off medication, he is likely to suffer relapse episodes”. Dr. Thuo's report of 5<sup>th</sup> November, 2025 concludes that the accused “currently presents a low risk for future violent behaviour, contingent upon adherence to his prescribed treatment regimen and appropriate medical monitoring”.
14. Considering the mitigating factors already recorded by the court and the view of the community from where the accused hails, it is my view that the accused ought to be handed a non-custodial sentence in the form of an order for community service for a period of 5 years.
15. Accordingly, I sentence the accused to a 5-year imprisonment sentence forthwith in addition to the time already spent in custody. After remission is taken into account, the accused shall spend the balance of his term as a non-custodial term spent within the familiar environment of his family who are



directed to ensure that he maintains the requisite prescribed medical regimen. He shall continue with his treatments at Embu Level 5 Hospital and at any other place as it shall become necessary over time.

16. Any challenges faced by the accused may be reported to this court for further action.

17. Orders accordingly.

**DELIVERED, DATED AND SIGNED AT EMBU HIGH COURT THIS 11<sup>TH</sup> DAY OF FEBRUARY, 2026.**

**R. MWONGO**

**JUDGE**

Delivered in the presence of:

Accused Present in Court

Ms. Mwaniki for the State

Musyoka for Accused

Francis Munyao - Court Assistant

