



**Mulili alias Kijumbe v Republic (Criminal Case 09 of 2018)
[2025] KEHC 12457 (KLR) (28 August 2025) (Disposition)**

Neutral citation: [2025] KEHC 12457 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MAKUENI
CRIMINAL CASE 09 OF 2018
TM MATHEKA, J
AUGUST 28, 2025**

BETWEEN

KIOKO MULILI ALIAS KIJUMBE ACCUSED

AND

REPUBLIC PROSECUTION

DISPOSITION

Disposition

1. The offender was charged with murder contrary to section 203 as read with section 204 of the *Penal Code* – that on 30/3/2018 at Enguli Market, Wathini Sublocation, Kasikeu Location Mukaa District, Makueni County he murdered Francis Muthoki Kimilu.
2. He was not mentally competent to take plea/stand trial and spent time at Mathari Hospital undergoing treatment before the trial.
3. Thereafter, after a full trial there was sufficient evidence that he had killed the victim but he was found not guilty for reason of insanity.
4. The special finding required by s. 166(2) of the *Criminal Procedure Code* to have such a person held at the pleasure of the President has been found to be unconstitutional.
5. However, such a finding does not lead to an automatic acquittal. The need for reassurance of the secondary victims that they will be safe, and that the person responsible is held to a certain degree of accountability. The person did commit an offence and an appropriate disposition is required. It ought to serve the public interest and find a footing in the family and the community to understand mental health disorders and how to ensure that persons afflicted can live normal lives. Acceptance of the persons first, and being aware that their conditions can be controlled through proper treatment is key, as it is also preventative of re offending.



6. The Court of appeal gave some guidance in *KLA v Republic*[2024] KECA 1176 (KLR) on the manner of disposition of such cases in lieu of the impugned orders for one to be held at the pleasure of the President.
7. The *Sentencing Policy Guidelines 2023* state as follows
For offenders who are found ‘guilty but insane’
 - 3.4.18 The cases cited in the footnotes above make clear that the basis for any finding of ‘guilty but insane’ must be clearly expressed by the courts, pending further clarification and/or amendment in the law.
 - 3.4.19 On the question of sentence following findings under Sections 166 or 167, the court must be guided by relevant expert opinion based on the thorough examination of the offender. Among other things, courts should specifically request for advice on the treatment and care regime suitable for the offender.
 - 3.4.20 The court should then determine where the offender should be placed and give a direction that he or she be detained until a psychiatrist responsible for that facility, at such time certifies the offender as no longer a danger to society. The court should expressly state that upon making such a finding, the psychiatrist responsible for the facility must refer the matter back to the court before any release is made for further directions/order. This would also apply where treatment is failing, whereupon the court may make further orders on treatment. (Cr Appeal 26 of 2019 *John Kariuki Wangui v The Republic*.)
8. In this case, for purposes of disposition I made the following orders:
 - i. That Probation After Care Service to prepare and present a Social Inquiry report about the accused person akin to pre-sentence report for purposes of appropriate placement
 - ii. A Report from the Psychiatrist at Makueni Referral Hospital with a recommendation of suitable disposition be availed to court. To enable this, the accused on Monday 7th July 2025 be subjected to mental examination by the psychiatrist at Makueni Referral Hospital
 - a. For the present diagnosis
 - b. to determine whether he poses danger to the public or to himself
 - c. to determine whether he requires further treatment, and if so, a recommendation on what that would entail.
9. I now have the reports from Probation & After Care Services Makueni and the Psychiatrist Makueni Teaching and Referral Hospital
10. The psychiatrist states that “the client had morbid psychotic symptoms at the time of the incidence. This was reflected by command hallucination from chopper to kill the said. He currently has remitted and no longer experiences the command hallucinations. He is no longer a danger to self and others. Probation and medical team can support the outpatient treatment for at least a year”.
11. The PACs Report recommends a Probation Supervision Order for three years and the following Intervention Measures. The report states; From the above social report, I am of the view that the accused is a person who can be corrected on non-custodial measures through the following intervention measures to his behavioural management.



1. Be supervised and closely monitored through regular reporting to avoid bad companies who may influence him in bad behaviors.
2. Be counselled and advised on proper anger management and conflict resolution skills.
3. Be supervised and supported and engaged regularly with a view to overcome the guilt he holds over the incident.
4. Be counselled against alcohol, drugs and other substance abuse.
5. Be encouraged to take his medication without fail, and should the need arise the PACs office to inform the health care providers for appropriate action .
6. Be committed to attend Quarterly case conferencing with the family members and local administration to discuss and review his supervision progress
7. In view of the recommendation by the psychiatrist, the above interventions appear appropriate to the circumstances of the matter.
8. The only concern I have is this sentence in the PACS report

“While on probation he will be able to receive guidance and counselling that will help him reform and fully recover from his mental instability”
9. The PACs officer creates some confusion here because the offender’s issue is not merely behavioural. The PACS office must keep in mind the fact that the offender’s mental illness requires more than guidance and counselling and without proper medication he may relapse.
10. I would add another intervention, the continuous engagement with the family of the deceased who are willing to restore relations on a compensatory basis. The PACs office in its quarterly meetings with the family of the offender, to include that of the victim where appropriate.
11. The final order is that the offender is placed on probation supervision for 3 years on the conditions and interventions set out herein above.
12. The matter be mentioned before the Deputy Registrar after three months hereof for a progress report on a date to be assigned by the Court Assistant.

DATED, SIGNED AND DELIVERED THIS 28TH AUGUST 2025

MUMBUA T MATHEKA

JUDGE

Offender present

Mr. Hassan for the Offender

Mr. Odero PACs

Ms Mwanatumu CA

Mr. Kazungu for State

