



**Republic v MM (Criminal Case 027 of 2018)
[2025] KEHC 12456 (KLR) (28 August 2025) (Disposition)**

Neutral citation: [2025] KEHC 12456 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MAKUENI
CRIMINAL CASE 027 OF 2018
TM MATHEKA, J
AUGUST 28, 2025**

BETWEEN

REPUBLIC PROSECUTOR

AND

MM ACCUSED

DISPOSITION

Disposition

1. The offender MM was charged with murder contrary to section 203 as read with section 204 of the Penal Code. That on 1/12/2018 at Mukuku Village, Mbooni East Subcounty within Makueni County he murdered Michael Mwendwa Mutheu. When he was presented in court on 13/12/2018 but had mental health issues. He was later found fit to plead and after a full trial. Guided by the decision of the Court of appeal in KLA v Republic[2024] KECA 1176 (KLR) among others, and having found sufficient evidence that the accused person was not in control of his faculties when he committed the offence, I found and held that the was not guilty for reason of insanity.
2. Since the special finding required by s. 166(2) to have such a person held at the pleasure of the President has been found to be unconstitutional, it is my view that, such a finding does not lead to an automatic acquittal. The person did commit an offence and an appropriate disposition is required. 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. In addition, 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 even while back in the community.



3. 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.
4. 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 vs The Republic.)
5. To arrive at a proper disposition, I made the following orders:
6. 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
7. A Report from the Psychiatrist at Makueni Referral Hospital with a recommendation of suitable disposition be availed to court. To enable this, the accused is, as soon as practicable and within 7 days from the date hereof, be subjected to mental examination by the psychiatrist at Makueni Referral Hospital
 - i. For the present diagnosis
 - ii. to determine whether he poses danger to the public or to himself
 - iii. to determine whether he requires further treatment, and if so, a recommendation on what that would entail.
8. I have before me both the PACs Report and the Mental Assessment Report.
9. The psychiatrist Dr. J M Masila states in the report that that the client has had psychotic episodes with hallucinations and delusions. He is currently on medication and is not a danger to self or others. Needs to continue with monitored treatment for a long period to prevent relapses. This can be outpatient monitored by probation and healthcare providers. The court can get regular updates at least every quarter, but certain progress and compliance.
10. The PACs report indicates that the offender was born in 1983 and got mentally ill in 2014 when the family noticed abnormalities. He started staying and sleeping in bushes and in marketplaces. It was reported that he also started assaulting domestic animals and his wife. In 2015, he was taken to Makueni Hospital for mental treatment, he was treated and discharged on medication.



11. The deceased was his nephew. The family was reinterviewed and they stated that although they had not been able to come to terms with the loss of their kin, they had forgiven him believing that he would be able to keep peace while at home. The offender's paternal uncle is ready to be involved in the treatment of his mental illness.
12. It is also reported that during the interview, the offender demonstrated a remorseful attitude towards the offence and prayed for this court's leniency promising to uphold his good behavior.
13. On that basis the PACs officer recommends a Three-Years' Probation Order for proper supervision, monitoring and rehabilitation. The PACs undertakes to ensure that he receives guidance and counselling that will help him reform and fully recover from his mental instability.
14. The *Mental Health Act* Cap 248 provides for the rights of persons with mental illness. It provides for the rights under Part II i.e s. 3, 3A to 3K. Section 20A. Provides for Review of mental health status in the following terms
 - (1) The mental health status of a person with mental illness shall be reviewed periodically by a mental health practitioner and such review shall include a review of —
 - (a) the nature of the illness;
 - (b) the need for care and treatment;
 - (c) the type of care and treatment provided;
 - (d) the need for referral, transfer or discharge; and
 - (e) any other matters related to the mental health status of the person with mental illness.
 - (2) The review of the mental health status of a person with mental illness may be initiated by—
 - (a) the person with mental illness;
 - (b) the mental health care practitioner in charge of managing the person with mental illness;
 - (c) a supporter of the person with mental illness;
 - (d) a representative of the person with mental illness;
 - (e) the person in charge of the facility;
 - (f) any other person upon proof of the nature of their interest; or
 - (g) the Board.
15. The review recommended by the Psychiatrist is grounded on this law. My only concern is the fact that the PACs officer seems to think that the offender's issue is a behavioral one, that will be 'cured' through guidance and counselling. To move on with the offender with that mindset would defeat the purpose of the doctor's recommendation that the offender requires monitored treatment for a long time to prevent relapse. It is necessary that the PACs Office Makeni obtains the necessary awareness on their role in the supervision of persons with mental health disorders. This in my view includes close collaboration with the office of the County Psychiatrist as it is evident that the doctor recognizes that the PACs plays a crucial role.
16. With sufficient information PACs can drive the fight against the double stigma that an offender with mental disorders faces- that of having the disorder, and of being an offender. In that way the



community, the victims will get the opportunity to have the awareness of mental health disorders, and the fact that with proper treatment, a person can lead a normal life and be a productive member of the society.

17. The offender has the right , to live within the community and with his family. In this case all his immediate family members are deceased but one uncle is ready and willing to walk this journey with him.
18. The offender has been in custody since 2018. In his lucid moments he has become aware of what he did and is remorseful.
19. Currently he is fine , on treatment. He must continue like that.
20. In the circumstances, I allow the recommendation for a 3 year Probation supervision order in the following terms
 - i. That the offender will be placed on Probation Supervision for 3 years
 - ii. That the offender will abide by the probation order
 - iii. The County Probation Officer will supervise these orders as the offender's issue is not merely behavioural
 - iv. That the offender will cooperate with his uncle, the health providers to enable him maintain consistency of treatment.
 - v. That the offender will supervised and closely monitored through regular reporting , counselled and advised on proper anger management and conflict resolution skills.
 - vi. Be counselled against alcohol, drugs and other substance abuse.
 - vii. 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.
 - viii. Be committed to attend Quarterly case conferencing with the family members and local administration to discuss and review his supervision progress
 - ix. In view of the recommendation by the psychiatrist, the above interventions appear appropriate to the circumstances of the matter.
 - x. That the matter be mentioned for a progress report to be filed by PACS in three months from now before the Deputy Registrar on a date to be assigned by the Court Assistant
21. The offender having understood the orders of the court and consented thereto, these orders issue accordingly.

DATED, SIGNED AND DELIVERED THIS 28TH AUGUST 2025

MUMBUA T MATHEKA

JUDGE

Offender Present

Mr Odero for PACs

Mr. Hassan for the Offender

Kazungu for the State

