



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT VOI

CRIMINAL CASE

No.1 OF 2016

BETWEEN:

REPUBLIC

and

GABRIEL NZUVU JOHNCONVICT

SENTENCE

1. The Convict before the Court was charged with Murder contrary to *Section 203* as read with *Section 204* of the *Penal Code, Cap 63, Laws of Kenya*. On 31st October 2018, this Court found the Accused guilty of murdering his grandmother, FATUMA NZIVILI.

2. The Allegations was that he killed his grandmother by smashing her skull with the wooden handle of an ae. The post-mortem records that she had a massive epidural and sub-dural hemorrhage with brain compression caused by a fractured skull and leading to bleeding through the nose, mouth and ears. On 11th March 2016, the Accused was sent to Port Reitz Hospital for psychiatric evaluation on his fitness to plead. On 5th September 2016 a report dated 30th March 2016 was filed. It stated that the Accused appeared “normal” and was therefore fit to plead. He was then sent for Psychiatric evaluation and treatment if necessary at Moi Referral Hospital in Voi by an order of the same Court on 28th July 2016. It seems this was done on the Application of Prosecuting Counsel due to an incident that is not fully recorded. Again the Report is not on the File. However, the Trial Court, Hon Lady Justice Jacqueline Kamau proceeded to hear the Prosecution case and on 29th June 2017, held that there was a case to answer. During the Trial the Accused was represented throughout by Counsel, namely Mrs Elizabeth Isika, who is well known and experienced. There was no issue taken as to capacity. On 20th December 2017, Hon Lady Justice Kamau heard the oral testimony (sworn evidence) of the Accused. The Submissions were filed in June 2018 and this Court as currently constituted delivered Judgment and found the Accused guilty as charged. The Convict did not accept the verdict on the basis that when his grandmother was taken to hospital she was alive.

3. Thereafter, this Court made the following Order:

1. *The Probation Service is directed to cause a suitably qualified officer to prepare and file a probation report within 28 days*

2. *Such Report to include the following:*

(1) *Victim Impact Assessment*

(2) *Sentencing recommendation*

(3) *Ownership of the Family home*

3. *The Accused shall be taken for a full assessment to Mathare Mental Hospital. The Consultant Psychiatrist to prepare and file a report addressing the following:*

(1) *The mental health of the Accused and in particular whether there is any medical reason that could lead to him experiencing hallucinations*

(2) *Blood and liver function tests to ascertain whether the Accused has suffered or endured substance and/or alcohol abuse.*

(3) *If such issues are found how are they best addressed*

4. *For the duration of the medical examination and assessment, the Accused is to be taken to and held at the Nairobi remand and allocation facility in Industrial Area Nairobi.*

4. When the matter came before the Court on 5th December 2018, the Report was not ready. The Report from Dr Kitazi N, Consultant Psychiatrist Mathari National Teaching & Referral Hospital dated 12th March 2019 was not filed until 13th August 2019. It stated that the Hospital had produced an earlier report dated 27th November 2018. That Report does not appear to be on the file. The Report states:

“The accused; has been undergoing mental health treatment since 2012. He was however, not compliant with medication and had previous relapses. It was during a relapse, when he assaulted his grandmother who succumbed to injuries.”.

It seems that history was related by the two sisters of the Accused Lydia and Lilian. From that the Consultant Psychiatrist felt himself able to conclude that:

- *The accused suffers from schizophreniaia*
- *He requires admission to monitor and stabilize him*
- *We have started him on tab largactil 100 mg nocte and modecate 25 mg (IM) stat.*

The Report also states – 3 years too late, that the Accused was unfit to plead.

5. On the same day, 13th August 2019, Ms Anyumba on behalf of the ODPP and the Resident Magistrate in the Lower Court (Hon Anne Karimi) resolved to review and amend the Order of the High Court as to the detention of the Accused and move him to Manyani Prison. It seems to this Court that the Order was made (1) without jurisdiction and (2) contrary to the medical advice provided, setting out the need for his admission. It also frustrated any further investigation and clarification of what was an appropriate sentence. It did so unilaterally.

6. On 23rd September 2019, the Probation Officer for Voi Sub-County as opposed to Taveta Sub-County filed a Probation report. That Report provides the Court with little guidance, in particular as it was made in ignorance of the medical reports already obtained. However, the Court is able to garner the following information about the Convict:

(1) He is unpredictable and temperamental;

(2) The slightest provocation will cause him to be violent

(3) The facts of this case show that the violence is extreme and indiscriminate

(4) The Community perceive him to be a strange person and a threat to them

(5) The Victims do not accept that the Accused did not understand or comprehend his actions and their consequence. The Victims are also related to the Convict .

7. The Probation Officer demonstrates that he was oblivious of the fact that the Investigating Officer and/or Prosecuting Counsel and/or the Resident Magistrate had arranged it so that the Convict was not receiving any further medical/psychiatric treatment. This is demonstrated by the phrase that “ *In the absence of ...[any]... report [on]... the treatment he is undergoing at Mathare mental hospital, we are challenged to come up with an appropriate sentence*”. That report also requires further psychiatric evaluation which was equally frustrated by the approach taken, which is set out above.

8. In the circumstance, it is clear to this Court that the Convict suffers from schizophrenia. It is also clear from observing his demeanour in Court and the oral evidence that he has lucid periods as well as manic periods. This Court is not satisfied that when the Convict killed the Deceased, he was in fact suffering from a manic/schizophrenic episode. However, the outcomes demonstrate clearly that he can be a danger to the people around him. From the Consultant Psychiatrist’s Report, it is also clear that, for his own safety and welfare, the Convict needs to be admitted to a psychiatric institution.

9. In the circumstances, the most appropriate order is for the Convict to be detained at Mathare Mental Hospital at the Pleasure of His Excellency the President pursuant to **Section 165 of the Criminal Procedure Code Cap 75**. The aforesaid Treatment and Referral Hospital is further directed to treat the Convict and also conduct regular 3 monthly assessments the finding of which shall be recorded in a written report in his records. Further, this Court has been apprised of the fact that the Convict is liable to inherit a significant estate from his Father. This Court has come to the conclusion that the Convict is unable to manage his affairs, in particular when he is experiencing a schizophrenic episode. It is therefore Further Ordered that the Public Trustee be, and is hereby appointed as the manager of the property (estate) and guardian of the Convict (**Section 26 Mental Health Act Cap 248**).

10. It is further ordered that any review of this Order shall be the preserve of the High Court, in the absence of an appeal to a Court of superior jurisdiction.

11. **Disposal:** Convict is guilty of murder of his grandmother. (1) The Convict to be detained in Mathare Mental Hospital at the pleasure of the President, (2) The Public Trustee is appointment guardian of the Convict and Manager of his property and assets.

Order accordingly.

FARAH S. M. AMIN

JUDGE

SIGNED DATED AND DELIVERED at Voi on this the 23rd day of October 2019

In the Presence of:

Court Assistant: Josephat Mavu

Prosecution: Mr Kiprof

Convict: Present in Person. Mrs Isika on the Record but not present.



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