



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KAKAMEGA

CRIMINAL CASE NO. 61 OF 2019

REPUBLIC.....PROSECUTOR

VERSUS

BRAXTON JUMA ALIAS BRASSIA OTIENO OGUTUACCUSED

RULING and ORDER

1. The Accused herein was arrested on 20th October 2019 to answer a Charge of murder. The Particulars of the Offence were that “**BRAXTON JUMA ALIAS BRASSIA OGUTU**: On the 20th day of September 2019 at Lusheya Sub-Location, MUSANDA Location, in MUMIAS WEST Sub-County within KAKAMEGA COUNTY murdered **FELIX OMONDI**. The cause of death was recorded in the Post Mortem Report (dated 4th October 2019) as “Severe Head Injury and Blunt [Force] Trauma”. The Accused was rescued from the mob who wanted to harm him and taken into custody.

2. On 1st October 2019, the Accused was taken to Kakamega County General Teaching and Referral hospital to see the Consultant Psychiatrist for psychiatric assessment. The Assessment is recorded in the Report thus:

“Brasia could not coherent explain the situation surrounding his arrest. He is not in a position to question witnesses, as his perception of reality is altered. He does however know the implication of taking a plea.

His speech the volume was low, slurred, fluent, mood was elated and affect was congruent. Judgment was poor during interview he was noted to have auditory hallucination.

In view of the above, it is my belief that Brasia is not fit to stand trial. He will benefit from scheduled psychiatric visits and medication.”

3. On 22nd October 2019, Hon. Mr. Justice Musyoka made an Order committing the Accused to Mathare Mental Hospital for treatment. It appears that order was not complied with because on 13th October 2021 the Officer in Charge of the Prison included the Accused in a list of prisoners who were to be taken for further management at Mathari National Teaching and Referral Hospital.”

4. Again on 18th October 2021, the Principal Secretary for State Department for Correctional Services directed “... that the said accused be removed and delivered into the custody of the Chief Consultant Psychiatrist in Charge, Mathari Hospital, Nairobi: AND this is to authorize you, the JUDGE to issue a warrant in accordance with this order.” That direction was made under **Section 162 (5)** of the **Criminal Procedure Code** and delegated to the Principal Secretary.

5. However, the Accused has still not been removed to Mathare Teaching and Referral Hospital. Therefore, it becomes necessary for this Court to make an order to facilitate the same under the Mental Health Act and the Constitution provisions contained in

Article 19 (2) to preserve the dignity of the individual and preserve social justice.

6. It is therefore Ordered and Directed that:-

(1) The Officer in Charge Kakamega Main G.K. Prison shall personally ensure that the Accused, BRASIA OTIENO OGUTI is transported from Kakamega Main G.K. Prison to Mathare Teaching and Referral Hospital in Nairobi.

(2) As soon as the Accused arrives at Mathare Teaching and Referral Hospital, he shall be placed in the custody and care of the Chief Consultant Psychiatrist in Charge, Mathare Teaching and Referral Hospital (“hereinafter referred to as “the Hospital”).

(3) During his stay at the Hospital, the Accused shall be detained as a Criminal Mental Patient for treatment until further order. Such further orders may be made on the Application of the Accused, his family and/or next of kin, the Office of the Director of Public Prosecution and the Consultant Psychiatrist.

7. This Order is made under **Section 16(2), 16(3) and 16(4)** of the **Mental Health Act Cap 248**.

Order accordingly,

FARAH AMIN

JUDGE

DELIVERED, DATED AND SIGNED THIS THE 15TH DAY OF MARCH 2022 IN KAKAMEGA.

IN THE PRESENCE OF:

COURT ASSISTANT:

PROSECUTOR: ACCUSED:



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