



**Republic v Kandie (Criminal Case 23 of 2023)
[2024] KEHC 15975 (KLR) (18 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 15975 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ITEN
CRIMINAL CASE 23 OF 2023
E OMINDE, J
DECEMBER 18, 2024**

BETWEEN

REPUBLIC PROSECUTOR

AND

DANIEL KIBET KANDIE ACCUSED

RULING

1. The accused, Daniel Kibet Kandie was charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code (Cap.63). The particulars of the offence were that on the 2nd day of April, 2015 at Chepsamo village, Kapkenda Sub-location, Mosop Location in Keiyo South District, murdered his son Amos Kipkosgei Kibet.
2. On 4/5/2015, plea was taken before Honourable Justice G.K. Kimondo and the accused person entered a plea of not guilty. On 28/9/2015, the accused person was granted bond of Kshs.1,000,000/= with sureties and the same was reviewed on 27/10/2015 to Kshs.500,000/=. Hearing was fixed for 4/5/2016 but the matter did not proceed and there have been several adjournments ever since with the matter never taking off.
3. However, on 31/1/2024, when the matter was scheduled for hearing before Honourable Justice Wananda, Prosecution Counsel Ms. Ayuma informed the Court that the Investigating Officer had informed her that he had (2) witnesses, however they were not there. Prosecution Counsel sought that the Investigating Officer address the Court with regard to the issue and when the Investigating Officer was required to do so he stated that he is PC No. 83203 Onesmus Daniel Kiseno and that he had bonded (3) witnesses – the wife, daughter and brother of the accused who had confirmed attendance and that he had even called them through the accused’s wife Veronicah’s phone but the same was switched off and that this was not the first time they were doing that. He also pointed out that the accused was out on bond and it was likely that he had something to do with the conduct.



4. Prosecution Counsel sought to have the witnesses brought to her office so that she could confirm what the problem is. Counsel Chepkwony on the other hand appearing for the accused person sought the availability of the other witnesses who had recorded statements in the matter. Counsel maintained that this is a very old case filed in 2015 and that no witness has ever testified not even the Investigating Officer. Counsel contended that the allegations are thus baseless.
5. In issuing directions, the Court noted that this is an old matter and that the key witnesses appear to be the accused's wife, daughter and brother. Having noted so, the directed prosecution to meet with them and decide how proceed with the case. The Court then scheduled the matter for hearing on 24/4/2024.
6. When the matter came up on 24/4/2024, Prosecution Counsel, Mr. Kirui informed the Court that he was not ready to proceed as the Investigating Officer has been facing challenges in reaching the witnesses. He also told the Court that there was an Affidavit sworn by the Investigating Officer in that regard. Prosecution therefore intended to enter a *nolle prosequi* and the Court fixed the matter for Mention on 6/11/2024 for that purpose.
7. When I took over the matter on 6/11/2024, Prosecution Counsel Mr. Kirui, submitted that this is a 2015 matter. Counsel further submitted that there is on record an Affidavit sworn by the Investigating Officer dated 1/10/2024, detailing the challenges and frustrations he had met in getting the witnesses in this case.
8. Counsel therefore submitted that in the circumstances, there are two available options to the prosecution. The first is that they enter a nolle prosequi under the provisions of Section 82 of the CPC. The second is that they close the prosecution case for lack of witnesses.
9. Counsel submitted that based on the precedent set in the Kiambu case being High Court Case No. 1 of 2016 *Republic v Muneh Wanjiku Ikigu* where the Court faced with similar circumstances as the prosecution is faced with today, the court analyzed the two available options and held that where the circumstances are that an accused person has been in custody for a long period of time, then allowing that a nolle prosequi be entered by the prosecution will be prejudicial to an accused because it would accord the prosecution a theoretical possibility of bringing fresh charges against the accused.
10. The Court therefore held that the correct procedure would be to allow the prosecution to close its case so as to bring finality to the matter. In observing that the accused in this case has also been in custody for long, Counsel Mr. Kirui prayed that he be likewise allowed to close the prosecution case.
11. Having considered the circumstances of this case as above summarized and having also considered the decision of the High Court in Kiambu herein cited I am satisfied that this case also warrants that the prosecution closes its case without calling witnesses for reasons that the witnesses are not available. I therefore allow the application by the prosecution and their case is now hereby closed and the accused is accordingly acquitted under Section 210 of the *CPC* for reasons that he has no case to answer.

READ DATED AND SIGNED AT ELDORET ON 18TH DECEMBER 2024

E.OMINDE

JUDGE

