



REPUBLIC OF KENYA



**Republic v Kiprotich (Criminal Case 36 of 2023)
[2024] KEHC 15978 (KLR) (18 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 15978 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ITEN
CRIMINAL CASE 36 OF 2023
E OMINDE, J
DECEMBER 18, 2024**

BETWEEN

REPUBLIC PROSECUTOR

AND

ABRAHAM KIPCHIRCHIR KIPROTICH ACCUSED

RULING

1. The accused, Abraham Kipchirchir Kirotoch was charged with the offence of murder contrary to Section 203 as read with Section read with section 204 of the Penal Code (Cap.63). The particulars of the offence were that on the night of 25th and 26th June, 2017 at Tenderwa Village in Kayyego Division, Marakwet West Sub-County within Elgeyo Marakwet County, murdered Elias Kibiwott Kirotoch.
2. On 19/7/2017, plea was taken before Honourable Lady Justice C.W. Githua and the accused person entered a plea of not guilty. On 18/6/2018, the accused person was granted bond of Kshs.300, 000/= with sureties. Hearing was the fixed for 15/10/2018 but the matter did not proceed and there have been several adjournments ever since with the matter never taking off.
3. However, on 2/7/2024, when the matter was scheduled for hearing before Honourable Justice Wananda, Prosecution Counsel Mr. Kirui informed the Court that the witnesses were bonded but they claimed to have sorted out the matter out of Court. Counsel sought for last chance to decide whether to terminate the case. The Court then the adjourned the matter to 1/10/2024 and when the matter came up on the said date Mr. Kirui indicated that he was not ready to proceed because the witnesses were unwilling to come to Court to testify. 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 5/11/2024 for that purpose.



4. When I took over the matter on 5/11/2024, Prosecution Counsel Mr. Kirui, submitted that this matter was registered in the year 2017. That in between, there have been more than 12 hearings and witnesses have never appeared to testify and so the matter has never proceeded.
5. Counsel further submitted that there is on record an Affidavit sworn by the Investigating Officer dated 1/10/2024 detailing the frustrations that he has encountered in bonding witnesses. Counsel therefore submitted that in light of the depositions made by the Investigating Officer in the said Affidavit, it is obvious that the matter will never proceed.
6. 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.
7. 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.
8. 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.
9. 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 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

