



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT SIAYA**

**CRIMINAL CASE NO. E007 OF 2020 [MURDER]**

**CORAM: R.E. ABURILI, J**

**STATE.....PROSECUTION**

**VERSUS**

**ISAIAH ODHIAMBO OSIRE.....ACCUSED**

**RULING**

1. This case is due for hearing. However, the ODPP is unable to proceed with the hearing as scheduled because the witnesses are not present. The court has declined an adjournment as no plausible reasons have been given. The Prosecution applies to terminate the trial vide Section 82 of the Criminal Procedure Code. The accused through his counsel submits that the court should consider that the prosecution were given the opportunity to call witnesses which they have failed to do so.

2. I have considered the Application by the prosecution and response by the defence counsel. Section 82 of the Criminal Procedure is the procedural law governing the power of the Director of Public Prosecutions to terminate a criminal trial. Under Article 157(6) & (7) of the Constitution, the Director of Public Prosecutions may discontinue criminal proceedings at any stage before judgment is delivered.

3. In addition, such discontinuation may only be undertaken with the permission of the court. If the discontinuation is done before close of the prosecution's case as is in the present case, the accused shall not be acquitted. He is only discharged and fresh proceedings may be initiated against him.

4. Having considered the application and the response by the defence and considering the reason being non-availability of witnesses, I find that it is in the interest of justice to allow discontinuance of the charge of Murder against the accused person under Section 82 of the Criminal Procedure Code as read with Article 157 (6),(7) and (8) of the Constitution. The accused is notified that the prosecution may bring fresh charges against the accused person without prejudicing his guaranteed rights under the Constitution.

5. Accordingly, I allow the prosecution to discontinue this case against the accused Isaiah Odhiambo Osire and discharge him from the information of Murder dated 25<sup>th</sup> November, 2020.

6. File closed.

7. Orders accordingly.

**DATED, SIGNED AND DELIVERED AT SIAYA THIS 19<sup>TH</sup> DAY OF APRIL 2021**

**R.E. ABURILI**

**JUDGE**

**In the Presence of:**

Accused person and his Counsel Mr. Otieno Advocate

Mr. Kakoi, Principal Prosecution Counsel for State

Court Assistants: Mboya and Modestar