



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KERICHO

CRIMINAL CASE NO.9 OF 2017

REPUBLIC.....PROSECUTOR

VERSUS

GEOFFREY KIPROTICH CHIRCHIR.....ACCUSED

RULING

1. On 2nd April 2019 when this case came up in court for the first time before me, the accused informed the court that he wanted to change his plea, and plead to a lesser charge of manslaughter instead of the present murder charge.
2. The case was already part heard, and the Prosecuting Counsel Ms Keli objected to the request for change of plea to a lesser and stated that apart from the fact that the State had considered the appropriate charge at pre-trial directions stage and opted to proceed on a murder charge, the case had already progressed to an advanced stage.
3. In response, Mr. Kirui, counsel for the accused stated that the law allowed the accused to change plea at any time during proceedings. According to counsel the request of the accused to plead guilty to a lesser charge was in order. None of the counsel cited any law to the court.
4. In my view, the right of an accused person to change plea at any time of the trial cannot be doubted. He can change from a plea of not guilty to one of guilty, and vice versa before conclusion of the trial. The provisions relating to fair hearing under Article 50 of the Constitution, in my view protect the right of the accused to change plea on his own volition at any time during trial.
5. In the present case, however, the accused person is not intending to change his plea from not guilty to guilty or vice versa, to the present charge, but asking to plead guilty to a lesser offence, which the State objects to. The powers of the Director of Public Prosecutions are enumerated under Article 157 of the Constitution.
6. Article 157 of the Constitution confers on the Director of Public Prosecutions powers to commence and prosecute, and discontinue criminal proceedings. In particular Article 157 (6) (9) and (10) provide as follows:-

“157. (6) The Director of Public Prosecutions shall exercise State powers of prosecution and may-

(a) institute and undertake criminal proceedings against any person before any court (other than a court martial) in respect of any offence alleged to have been committed;

(b) take over and continue any criminal proceedings commenced in any court (other than a court martial) that have been instituted or undertaken by another person or authority, with the permission of the person or authority, and

(c) subject to clause (7) and (8), discontinue at any stage before judgment is delivered any criminal proceedings instituted by the Director of Public Prosecutions or taken over by the Director of Public Prosecutions under paragraph (b)

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(9) The powers of the Director of Public Prosecutions may be exercised in person or by subordinate officers acting in

accordance with general special instructions.

(10) The Director of Public Prosecutions shall not require the consent of any person or authority for the commencement of criminal proceedings and in exercise of his or her powers or functions shall not be under the direction or control of any person or authority.

(11) In exercising the powers conferred by this Article, the Director of Public Prosecutions shall have regard to the public interest, the interests of the administration of justice and the need to prevent and avoid abuse of the legal process.

6. In my view, the Constitutional powers and functions of the Director of Public Prosecutions above, put the responsibility of preferring the nature of charges in matters prosecuted by the State, on the Director of Public Prosecutions. Under Article 157 (10) of the Constitution, the Director of Public Prosecutions cannot be directed by any person or authority on the nature of charges to bring against any accused person. In doing so the Director of Public Prosecutions has to take into account the provisions of Article 157 (11) of the Constitution.

7. Since I have not been told that the murder charges preferred by the Director of Public Prosecutions herein contravene the requirements under Article 157 (11) of the Constitution, in my view, the case will have to proceed on a murder charge, as preferred by the Director of Public Prosecutions.

Dated this 27th day of May 2019.

George Dulu

JUDGE