



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KABARNET

CRIMINAL MISCELLANEOUS APPLICATION NO 79 OF 2017

AND

IN THE MATTER OF ARTICLE 159 (2) (C), 163(3)

(a) (d) (ii), 259(1) OF THE CONSTITUTION

AND

IN THE MATTER OF SECTION 204, 362 AND 364(1)(b)

OF THE CRIMINAL PROCEDURE CODE

AND

IN THE MATTER OF APPLICATION FOR WITHDRAWAL OF THE

COMPLAINT BY THE COMPLAINANT AT THE PRINCIPAL

MAGISTRATE'S COURT AT ELDAMA RAVINE

CRIMINAL CASE NO 53 OF 2016

KELLY KASES BUNJIKA.....APPLICANT (ACCUSED)

VERSUS

DIRECTOR OF PUBLIC PROSECUTIONS (DPP).....RESPONDENT

AND

SALIM NGINAYO JUMA....INTERESTED PARTY (COMPLAINANT)

RULING

INTRODUCTION

1. The applicant is on trial before the trial court in Eldama Ravine Principal Magistrate's Court Criminal Case No. 53 of 2016 for the offence of robbery with violence contrary to section 296 (2) of the Penal code, the particulars of which were that (1) Kelly Kases Bunjika (2) Dancan Arekwen Paron on the 24th day of February, 2014 about 8.30 pm along Loruk Barbelo road in East Pokot Sub-County within Baringo County, jointly being armed with dangerous weapon namely revolver robbed Salim Nginayo Juma a motor vehicle registration number KBH 922Q model Ford pick-up and one pair of black shoes all valued at Ksh.802,000/= and at, or, immediately before or immediately after the time of such robbery used actual violence against the said Salim Nginayo Juma."

2. The trial is at the defence stage the trial court having found that the applicant has a case to answer.

THE APPLICATION

3. By Notice of Motion dated 11th of September, 2017, expressed to be brought under Article 159 (2) (c), 165(3) (a), (d) (ii) of the Constitution and sections 204, 362 and 364 (1) (b) of the Criminal Procedure Code, the applicant seeks specific orders as follows:

1. *The instant application be certified urgent and service thereof be dispensed within in the first instant.*

2. *The honourable court be pleased to review the Order of the trial Magistrate court denying the request for withdrawal of the complaint by the complainant in Eldama Ravine Principal Magistrate's Court Criminal case no. 53 of 2016 (formerly Kabarnet Principal Magistrate's Court Criminal case no. 157 of 2014)*

3. *The honourable court be pleased to declare the charges against the Applicant (the accused) in Eldama Ravine Principal Magistrate's Court Criminal case No. 53 of 2016 (formerly Kabarnet Principal Magistrate's Court Criminal case no. 157 of 2014) as withdrawn.*

4. *In granting the above prayers, the honourable court be pleased to grant the request for withdrawal of the complaint by Salim Nginayo Juma the complainant in Eldama Ravine Principal Magistrate's Court Criminal case No. 53 of 2016 (formerly Kabarnet Principal Magistrate's Court Criminal case no. 157 of 2014) and consequently acquit Kelly Kases Bunjika the Applicant (the accused).*

5. *The honourable court be pleased to issue any further orders it deems fit and just.*

4. The grounds upon which the Application was founded were set out in the application as follows:

a) *That the Applicant is currently facing trial in Eldama Ravine Principal Magistrate's Court Criminal case No 53 of 2016 (formerly Kabarnet Principal Magistrate's Court Criminal case no. 157 of 2014).*

b) *That in the forgoing case the Applicant on 6th March, 2014 was charged with robbery with violence contrary to section 296 (2) of the Penal Code.*

c) *The complainant Salim Nginayo Juma has since then preferred to voluntarily withdraw the complaint against the applicant and their families reconciled.*

d) *That on the 11th July, 2017 when this matter came up for hearing the complainant through the Applicant's advocates requested the trial magistrate's Court at Eldama Ravine to withdraw the complaint herein which was opposed by the prosecution's counsel.*

e) *That on 4th September, 2017, the trial magistrate's court declined to grant request for withdrawal and directed the matter to proceed for full trial and the case is now pending for a ruling on the 25th September, 2017 on whether the accused has a case to answer.*

f) *That the honourable court has mandate, jurisdiction and powers to grant the prayers being sought.*

SUBMISSIONS

5. The parties' Counsel made submissions on the application with the applicant's counsel, Mr. Nabasenge filing and highlighting his written submissions and Ms. Macharia, Ass. DPP for the respondent making oral reply thereto, principally, as follows:

Applicant's submission dated 18th September, 2017

Jurisdiction of the Court

The jurisdiction of this honourable court in dealing with the instant application is two folds: one in exercising its supervisory jurisdiction on which the honourable court is empowered to grant the reliefs being sought; and two, under the unlimited original criminal jurisdiction of this honourable court, the reliefs being sought can as well be granted by this court.

Supervisory jurisdiction.

By dint of the provisions of Article 165(6) and (7) of the Constitution, this honourable court has supervisory jurisdiction over the subordinate court and may make any order to give any direction it considers appropriate to ensure fair administration of justice.

Article 165 (6) & (7) of the Constitution provides as follows:

(6) The High Court has supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function, but not over a superior court.

(7) for the purpose of clause (6), the High Court may call for the record of any proceedings before any court or person, body of authority referred to in clause (6), and may make any order or give any direction it considers appropriate to ensure the fair administration of justice.

In addition, section 362 of the Criminal Procedure Code states as follows:

“362. The High Court may call for and examine the record of any criminal proceedings before any subordinate court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding. Sentence or order recorded or passed, and as to the regularity of any proceedings of any such subordinate court.”

It follows, therefore, that pursuant to the foregoing provisions of the law this honourable court has mandate, powers and jurisdiction to revise the orders of the trial court. In the case of **Republic v. Samuel Gathuo Kamau** [2016] eKLR, the Court (HPG Waweru J.) observed that:

“Needless to say, that supervisory jurisdiction is exercised as may be provided by law – by way of appeal, revision, etc. it does not include on any perceived power to make a decision on behalf of a subordinate court which that court ought to make. In the case of appeals the supervisory power is exercised in respect to conviction, sentence, acquittal (section 347, 348 and 348A of the Criminal Procedure Code). As for revision, the supervisory jurisdiction is exercised in respect to findings, sentences, orders and regularity of any proceedings. See Article 165(7) of the Constitution and Section 362 and 364 of the Criminal Procedure Code.”

Under the provisions of section 165 (3) (a) as read together with (d) (ii) of the Constitution, we submit that the honourable court by exercising its unlimited original jurisdiction in criminal matters is empowered to grant the reliefs being sought by the applicant.

The application

In view of the foregoing provisions of the law the court is empowered to permit withdrawal of a complaint at any stage of the trial before the final verdict is made. This court guided by Article 159 (2) (c) of the Constitution and decided cases as follows.

In **Republic v. Juliana Mwikali Kiteme & Others** [2017] eKLR the court (Dulu, J.) stated:

“Having perused the affidavits of Katonye Mwangi the mother of the deceased and Stephene Wambua Mwangangi the brother of the deceased. Both are in agreement that the criminal proceedings against all the accused herein be terminated as the accused had paid cows in accordance with Kamba customs. A copy of the handwritten agreement on the mode of payment was filed up.

Under Article 159 (2) (c) of the Constitution this court is enjoined traditional reconciliation, subject to certain limitations under Article 159(3).

Having considered the request of the prosecuting counsel on behalf of the DPP and the documents filed on the reconciliation of the affected persons herein, I am of the view that this is a matter where the court should promote reconciliation as envisaged by the constitution.”

Similarly in the case of **Republic v. Mohammed Adow Mohamed** [2013] eKLR the court (R. Lagat - Korir, J.) observed that:

“Mr. Kimathi then proceeded on the instructions of the DPP to make an oral application in court to have the matter marked as settled. He cited Article 159(1) of the Constitution which allows the courts and tribunals to be guided by alternative dispute resolution including reconciliation, mediation, arbitration and tradition dispute resolution mechanism. He urged the court to consider the case as sui generis as the parties have submitted themselves of to traditional the Islamic laws which provide an avenue for reconciliation.

.....

In the unique circumstances of the present application, I am satisfied that the ends of justice will be met by allowing rather than disallowing the application.”

In **Republic v. P K M** [2017] eKLR, the court (G.W. Ngenye – Macharia J.) on an application for revision by the DPP from a ruling allowing a withdrawal of criminal charges for threats to kill and creating a disturbance made observation that:

“Although the learned trial magistrate did not cite the provision of the Constitution that promotes reconciliation, it is my view that he correctly applied alternative dispute resolution mechanism envisaged under Article 159 (2) (c). he did note that both the accused and the complainant were living together even as the charges were filed and it therefore made no sense to further push their disputes by not allowing the withdrawal of the case. In view thereof, if this application were allowed, the court would vitiate the process of promoting reconciliation which has already taken effect, in any event.”

In the case of **Dennis Wanjohi Kagiri v. Republic** [2016] eKLR where the accused had been charged with robbery with violence, the learned Judge Kimaru J. factored the willingness of the complainant to withdraw the complaint and acquitted the accused person. The learned judge in quashing the conviction rendered himself as follows:

“Another factor that influenced this court in doubting the complainant’s story is the fact that whereas the complainant alleged that she was strangled before she was robbed, no medical evidence was produced in court to support the claim. If indeed the complainant was strangled as she claim, then it was imperative that she secures medical evidence to support her claim. Further,

prior to the commencement of the trial, the complainant indicated to the trial court that she wished to withdraw the complaint. The trial court denied the complainant's application to withdraw the charge. The complainant told the court that she wished to withdraw the charge because village elders had successfully promoted reconciliation between herself and the Appellant. It may well be that the complainant and the appellant were being reconciled on account of their broken relationship. People who do not know each other cannot be reconciled. The claim by the appellant to the effect that the charge may have been motivated by a relation gone sour may not be beyond the realm of possibility."

In **Mary Kinya Rukwaru v. Office of the Director of Public Prosecution & another** [2016] the court (Muriithi, J.) deliberated on the principal of reconciliation as enshrined under Article 159(2)(c) of the Constitution and rendered himself extension as follows:

"17] I would agree with counsel for the interested party that "the Constitution recognises that justice is not only about prosecution, conviction and acquittals [and that] it reaches out to issues of restoration of the parties [with] court assisted reconciliation and mediation are the order of the day with Article 159 being the basic test for that purpose.

20] The nature of the charges in the criminal matter and its effect on society are important factors. In the case where the court considered that "the nature of corruption and bribery is that they are indeed crimes against the entire population in Kenya" *Lenaola. J. (as he then was) in DPP v. Nairobi Chief Magistrate's Court and Anor. Pet. No 21 of 2015* held that:

"Although ADR serves as an avenue for resolution of contentious matters, including criminal matters, reconciliation cannot possibly apply to circumstances whereby the crimes that an accused has been charged with affect more than the person who reported them. In this case, reconciliation between the two persons does not engender effective and just resolution of the matter. More importantly, such resolution goes against the constitution, which espouses integrity, accountability and social justice."

On without prejudice basis, in the instant case, the accused is charged with robbery with violence whereby the complainant was not seriously injured, is at all, any violence was used. He is very well alive kicking and now his conscience tells him to withdraw his complaint against the applicant/accused. It is only fair and in the interest of justice and in the spirit of the Constitution that the complainant's request to withdraw his complaint against the applicant/accused be granted.

Prosecution's reply – Ms. Macharia Ass. DPP

The application is opposed. The application is before the court after refusal of the trial court to withdraw the charge in Cr. Case No.53 of 2016.

Section 204 of the Criminal Procedure Code provides for withdrawal of a complaint. The section does not give absolute powers to withdraw the complaint. One must satisfy the court that there are sufficient grounds before the court can permit the withdrawal.

At p. 69 of the record of the proceeding DPP gives reasons for refusal to withdraw referring to Article 157 (11) of the Constitution as public interest and interest of the administration of justice.

Public interest means that what is for enduring good of the public to deter such offences since it is the duty of State to protect its citizens, atrocities their lives and properties.

It is not only the matters of corruption that are of public interest. Every criminal case is a matter of public interest as the complainant is in the republic and the republic or the state is a representation of such persons. The DPP has a duty to protect the interest of all Kenyans.

Section 176 of the Criminal Procedure Code on reconciliation – the court encourages settlement in matters not amounting to felony.

Robbery with violence is a felony and it is a matter of public interest. The DPP and all the aggrieved parties are complainants. The case of **Mohammed Abdow Mohammed** was withdrawn with directions of the DPP. Any withdrawal of the case under section 204 of the CPC must be accepted by the DPP and the court considering the nature of the offence, public interest and administration of justice.

In the criminal case no. 53 of 2016, Eldama Ravine, the complainant failed to give sufficient reasons to allow the withdrawal under section 204 of the CPC.

Replying affidavit by the complainant dated 22/9/17, paragraphs 5 and 6 complainant states that he and the applicant have been friends since childhood. And that they hail from the same neighbourhood and their families are friends and related. Allegation of the relationship in comparison with the evidence given by the complainant in the lower court is truly different. I refer to PW1 as evidence at p. 14-15 of the record indicated that he knew Kases as the brother to a driver he said to work with.

The evidence does not talk about any relationship with the applicant and knowing him other than being a brother to a driver he used to work with. It is an afterthought of the relation and due to the discrepancies, the issue that the complainant may have been coerced to withdraw the complaint.

In **Republic v. Faith Wangoi** [2015] eKLR it was held that a complaint in section 208 (1) of the CPC includes the prosecution as well as the person as described in the particulars.

We submit that in Cr. Case no 53 of 2016. PW1 who wished to withdraw the case is not the only complainant. The DPP is also a complainant in this case. The owner of the vehicle KBH 922 Q which did not belong to PW1 as he was only an employee is also a complainant in the matter. The vehicle belonged to the Intex Construction Company, and the complainant was employed as a driver.

The company was not involved in the withdrawal of the case. The vehicle is the subject of the offence as it is the one which was robbed even though PW1 also sustained injuries in the robbery.

The matter involves more than the complainant PW1. All the interested parties would have to be involved including the said company as the owner of the vehicle. That is the reason why the DPP declined. If the vehicle belonged to PW1 then the matter would have been different.

At p. 5 of the case the court held that it was necessary to place before court the nature of the agreement between the complainant and the accused to facilitate the withdrawal. This was not done in this case. I refer to submission by the applicant at p. 12, **DPP v. Nairobi Magistrate's Court, Nairobi HC Petition No. 21 of 2015**, [2015] eKLR

We urge that there are many parties involved in case and that PW1 cannot withdraw the case without involvement of other parties.

In Dennis Wanjohi v. Republic no medical evidence was produced to show that the complainant was injured. In Cr. No. 53 of 2016, the DPP did not provide medical evidence, however there was more than overwhelming evidence that the complainant was injured and violence was used in the process.

The complainant in his oral evidence at p. 15 of the record lines 19-24 states that he was tied with a rope and fell unconscious and found himself at the medical hospital where he was hospitalized for 12 days. The evidence indicates the seriousness of the injuries.

In Suleiman Kamau Nyambura v. Republic [2015] eKLR Nyeri Court of Appeal held that proof of any ingredient in robbery with violence is enough to sustain conviction. Failure to call a medical practitioner is just one of the ingredients of robbery with violence. The prosecution proved that the applicant was in the company of another and they had a gun and they robbed the complainant.

We urge that the applicant's application be dismissed. PW1 is not the only complainant. DPP opposed the withdrawal due to public interest and administration of justice. The applicant has already been put on his defence. Matters of the evidence can be canvassed on the appeal if he is not satisfied with the decision of the trial court.

DETERMINATION

Principles for the termination of criminal proceedings

6. Except in cases where criminal charges are terminated by operation of the law where upon death of an accused there is no person to be tried, convicted and sentenced in a trial, there are three ways upon which a criminal charge may be terminated by **act of the parties**, and it is opportune in this case to discuss the principles involved. A criminal case may be terminated by act of the parties, by reconciliation under section 176 of the Criminal Procedure Code (CPC); withdrawal or discontinuance of the charge by the complainant (s. 204 of the CPC) or the prosecutor (Art. 157 (6) (c) of the Constitution and s. 87 of the CPC); and alternative dispute resolution agreement pursuant to Article 159 (2) (c) of the Constitution. A criminal case may also terminate partly by act of complainant and by operation of the law under section 202 of the CPC, where the complainant fails to attend.

Reconciliation in personal or private cases

7. In cases of common assault, or any other offence of a personal or private nature not amounting to felony, and not aggravated in degree, section 176 of the CPC allows the Court to promote reconciliation, encourage and facilitate the settlement, in an amicable way, of proceedings, on terms of payment of compensation or other terms approved by the Court. See **Medardo v. R** (2004) 2 KLR 433 and **Shen Zhangua v R, High Court at Nairobi Miscellaneous Criminal Application 396 of 2006**.

Withdrawal of Charge

8. In accordance with section 204 of the CPC, a complainant may withdraw the complaint before the court makes a final order in the matter and the court has discretion as to whether to allow or reject the withdrawal when satisfied of existence or otherwise of sufficient grounds for permitting such a withdrawal. See **R v Malek Abdulla Mohamed, High Court at Kisumu No.113 of 1978**.

Alternative Dispute Resolution

9. The court is aware of the persuasive High Court decisions in **R v. Abdow Mohamed** (R. Korir, J.) and **R v. Juliana Mwikali Kiteme** (Dulu, J) where the courts have permitted the termination of serious charges of murder on the grounds that the families of accused and the victim had reconciled. While the Court, respectfully, takes the view that each case shall depend on its circumstances, a general principle may be laid down flowing from constitutional criteria for the prosecution, the withdrawal or termination of criminal cases in terms of Article 157 (11) of the Constitution by which the DPP is obliged to consider "**public interest, the interests of the administration of justice and the need to prevent and avoid abuse of the legal process.**"

10. It must be demonstrated by the accused or the prosecutor who seeks the withdrawal or termination of a criminal case that, in the wording of the Constitution, **the discontinuance** (read settlement, withdrawal or termination of the criminal case) is justifiable under the parameters of the considerations of public interest, interests of justice and need to prevent abuse of the legal process. Indeed, in **Juliana Mwikali**

Kiteme and *Abdow Mohamed* cases, supra, it was the DPP who made the application for settlement of the cases pursuant to alternative dispute resolution mechanism. See also *Republic v. Faith Wangoi*, Kajiado HC Criminal Misc. Application No. 1 of 2015.

11. Kimaru, J. in *Dennis Wanjohi Kagiri*, supra, did not allow the withdrawal of the charges before the commencement of the trial in the trial court. The learned judge quashed the conviction because the circumstances of the case raised a doubt as to the charge and not because it was settled by ADR, and only used the fact of the complainant's application to withdrawal the complaint as "raises reasonable doubt that the appellant robbed the complainant."

12. *R v. PKM*, supra, is clearly distinguishable as a matter of personal nature arising in a matrimonial context in which the learned judge promoted reconciliation under Article 159 (2) (c) of the Constitution and held as follows:

"Having made the above observations, I make marked distinction between the instant case and the cited case law being Nairobi High Court Petition No. 21 of 2015 (Supra). The instant case is of a personal nature involving two persons who are closely connected to each other by marriage. In the event of a dispute between them where the offence is not so grave, the best that the court can do and that social justice demands is to promote reconciliation for the sake of unity of the family. Doing the contrary dismantles the family and works against a cohesive society and Nation at large. To the contrary, the latter case involved a case of corruption which in the public interest could not be withdrawn. Although this case relates to a case of threat to kill, the circumstances under which the Respondent told the complainant he would kill her was explained by him without a rebuttal by the Applicant."

13. This court had opportunity in *Mary Kinya Rukwaru v. Office of the Director of Public Prosecutions & Another*, High Court at Nairobi Petition No. 285 of 2016, to consider the principles for approval of withdrawal of a case pursuant to ADR, where it held that although the Court has power to allow alternative dispute resolution mechanisms, the concurrence of the DPP in addition to any agreement between the complainant and the accused was necessary.

14. In *Rukwaru*, the Court considered the decision in *Abdow Mohamed*, supra, but declined to terminate the criminal charges of causing death by dangerous driving entered into by the personal representatives of the deceased and the accused, without concurrence of the ODPP reasoning that it was the DPP's responsibility under Article 157 of the Constitution to take into consideration public interest. In the present case, the charge of robbery with violence being prevalent in this areas is also of concern to the DPP who ought to concur in its withdrawal by the complainant under section 204 of the CPC or under the permissive provisions of the ADR mechanisms of Article 159 (2) (c) of the Constitution.

Conclusion

15. The provisions of the Criminal Procedure Code on termination of criminal cases must be brought into alignment with the constitutional provisions on the central role of the DPP in prosecution of criminal cases as holder of 'State powers of prosecution' under Article 157 of the Constitution, in accordance with Clause 7 (1) of the Sixth Schedule of the Constitution on ***Transitional and Consequential Provisions*** which provides as follows:

"Existing laws.

7. (1) All law in force immediately before the effective date continues in force and shall be construed with the alterations, adaptations, qualifications and exceptions necessary to bring it into conformity with this Constitution."

16. The superimposition of the approval procedure of Article 157 of the Constitution and the provisions of the CPC relating to termination of criminal cases introduces two elements of concurrence of the DPP and the public interest test, in addition to the agreement of the parties and approval by the Court. In other words, the Court must, in assessing whether in terms of section 204 of the CPC, there are sufficient grounds for the withdrawal of the charge, be satisfied that the DPP has concurred in terms of his mandate to discontinue any criminal proceedings under Article 157 (6) (c) and the DPP has considered public interest in compliance with his duty under Art. 157 (11) as follows:

"(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."

The central role of the DPP

17. As I understand his role, the DPP is the constitutional custodian, enforcer and defender of public interest in criminal justice which is the due administration of justice so that the offender is punished or otherwise dealt with, as appropriate, for deterrence and rehabilitation, the victim is assuaged and compensated as appropriate, and the society benefits from prevention of crime. In addition, the DPP ensures the criminal justice system is not abused to persecute the innocent, achieve collateral civil purpose or avoid due punishment for crime. among other improper use of the criminal process. This is the mandate of Article 157 of the Constitution, which only the DPP can discharge and, consequently, his involvement in any proposed compromise in criminal cases is indispensable.

18. It is evidence of the sacrosanct nature of the DPP's mandate, Article 157 (10) of the Constitution provides that he exercises his functions without any direction by any authority, of course, save for constitutional and judicial review of such exercise for juridical validity, as follows:

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

19. To succeed in challenging the constitutional validity of the action or, where he refuses to institute or continue or discontinue a prosecution, inaction of the DPP, an applicant must show that the DPP has failed to give effect, in the particular case, to “**public interest, the interests of the administration of justice and the need to prevent and avoid abuse of the legal process**”. Or, what amounts to the same thing, that the public interest and the interest of administration of justice and the proper use of the legal process demands that the action or inaction proposed by the applicant. In the same vein, if the applicant is the DPP who seeks to discontinue the criminal charge, it must be demonstrated that the withdrawal or discontinuance is consistent with the interest of public interest, the administration of justice and a proper use the criminal legal process.

20. In the present case, although the accused and the complainant agree to compromise the charges in a situation where in terms of section 204 of the Criminal Procedure Code applies in that the complainant has agreed to withdraw the charge, the DPP does not agree with the withdrawal of the charge. It is pointed out, in any event, that the complainant although being the driver and, therefore, the ‘special owner’ thereof, was not the real owner, of the motor vehicle the subject of the robbery with violence charge. It has not been shown that the DPP has violated the provisions of Article 157 (11) of the Constitution in refusing to allow or concur with the proposed withdrawal of the robbery with violence charge by the person indicated in the charge sheet as having been robbed.

Decision

21. Having considered the facts of this case, the court does not approve of the proposed withdrawal of the robbery with violence charge for the following reasons:

1. The serious nature of the offence of robbery with violence using firearms, which is prevalent in this area, requires a full trial with conviction, if there is evidence to sustain the charge, and appropriate punishment for deterrence.
2. Alternative Dispute Resolution mechanisms of Article 159 (2) (c) must be supportive and not destructive of the ability of the DPP to conduct his primary role as the executor of the State’s powers of prosecution under Article 157 (6) of the Constitution.
3. The approval of the DPP who has constitutional mandate and duty to consider under Article 157 (11) “**the public interest, the interests of the administration of justice and the need to prevent and avoid abuse of the legal process**” has not been obtained.
4. It is a public interest consideration within the meaning of Article 157 (11) of the Constitution that offenders in serious crimes should be suitably prosecuted and punished if found guilty.
5. Improper termination of serious criminal charges will demoralize police and prosecutorial agencies to the detriment of the country’s ability to combat and deter such crimes.
6. The complainant as the driver, and not the owner, of the motor vehicle the property subject of the robbery is not in a fitting position to compromise a criminal charge relating to the said property; and the interests of justice would require concurrence of the victim, the true owner of the property subject of the robbery charge.

22. The criminal charge of robbery with violence herein should, therefore, proceed to full trial before a competent court.

23. This court is, however, aware of a pending application by the applicant herein, **KBT HC Misc. Criminal Application No. 84 of 2017**, for revision of the trial court’s interlocutory finding on the question of **case to answer** and on the applicant’s request for recall of witnesses and, therefore, the trial will resume only after the hearing and determination, or disposal thereof.

Orders

24. Accordingly, for the reasons set out above, the Notice of Motion dated 11th September 2017 for the revision of the orders of the trial court refusing an application for withdrawal of the charges herein is declined.

25. There shall be no order as to costs.

DATED AND DELIVERED ON THIS 26TH DAY OF JULY, 2018

EDWARD M. MURIITHI

JUDGE

Appearances:

Mr. Nabasenge for the Applicant.

Ms. Macharia Ass. DPP for the Respondent.