



REPUBLIC OF KENYA

IN THE HIGH COURT AT KISUMU

CRIMINAL CASE NO 11 OF 2018

BETWEEN

REPUBLIC.....PROSECUTION

AND

SABASTIAN AMBANI MUSUNGU.....ACCUSED

RULING

1. The case is scheduled for hearing this morning.
2. When the matter was first called out, Miss Barasa, learned State Counsel, and Mr. Onsongo the learned advocate for the accused indicated that they were both ready to proceed.
3. Mr. Onsongo sought a little time to enable him first attend to another case which was coming up before Justice Boaz Olao. He requested that this case be slated last amongst the four criminal cases scheduled for trial today.
4. When the court had concluded the first of the said cases, this case was called out, and Mr. Onsongo advocate asked for time, to enable him make a formal offer for plea bargaining.
5. Miss Barasa objected to the application for more time, considering that this was the third time when the case was coming up.
6. The learned state counsel pointed out that the Witness Protection Agency was incurring very major expenses in keeping the prosecution witnesses safe.
7. Therefore, it was suggested that even if the accused should wish to give an offer for plea bargaining, the witnesses who were in court should be allowed to testify.
8. However, the accused expressed the view that if witnesses testified before his offer was accorded consideration, that may well constitute a waste of judicial time.
9. Miss Barasa also pointed out that the family of the deceased felt that the prosecution were delaying the case un-necessarily.
10. Mr. Onsongo pointed out that if the offer for plea bargaining was given a chance, the case would be concluded much sooner than would be the case if the matter proceeded to a full trial.
11. In my considered view, one can only talk about a faster conclusion of the matter through plea bargaining, if it were assumed that the offer would be accepted. If the offer were to be rejected, a trial would still be conducted.
12. At the moment, Miss Barasa is of the view that the circumstances under which the offence was committed are unlikely to persuade the prosecution to accept the offer by the accused for plea bargaining. However, the offer has not yet been made, and it cannot therefore have been rejected.
13. The director of Public Prosecution has the exclusive mandate to determine whether or not to accept the offer when it is made.
14. I appreciate that when the offer is being given consideration, there would be a delay, if the trial was put on hold.
15. But the said delay cannot be attributable to the Office of the Director of Public Prosecution.

16. I am inclined to allow the accused an opportunity to make his offer for plea bargaining.
17. In the event, I am inclined to put on hold the trial for a limited duration.
18. I appreciate that the continued need to keep safe the prosecution witnesses is not cheap. But I find that, the ends of justice are best served by, first, putting on hold the testimony of the protected witnesses.
19. Accordingly, I allow the accused 3 days, at most, to make his formal offer for plea bargaining.
20. The ODPP will have 3 days to respond to the said offer.
21. Thereafter, the case shall come up for mention before me, for further Directions.

DATED, SIGNED and DELIVERED at KISUMU, this 31st day of October 2018.

FRED A. OCHIENG'

J U D G E