



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT SIAYA**

**SIAYA HC. CRIMINAL CASE NO. 25 OF 2017**

**(CORAM: R. E. ABURILI - J.)**

**PETER OINDI ANYANGA.....ACCUSED**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**RULING**

1. Plea in this case was taken on 24/11/2017. The accused person **Peter Oindi Anyanga** is charged with the offence of murder contrary to **Section 203 as read with Section 204 of the Penal Code**. He is alleged to have murdered **Jacinta Amondi Onyango** on 30/3/2017 at Wanga'rot village, in Rarieda Sub County within Siaya County. He is alleged to have been in company of another not before this court. The information forming the basis of the charge herein is dated 13/10/2017 and was filed and signed by Ms. Maurine Odumba, Prosecution Counsel.

2. Throughout the Proceedings, Ms. Odumba was handling this matter until 24/7/2018 when this hearing dated was fixed. The court is alive to the fact that Ms. Odumba is now on maternity leave. Mr. Okachi SPPC now applies to have the charge of murder terminated under **Section 87(a) of the Criminal Procedure Code** as he intends to substitute the charge with that of Manslaughter. He submits that this was after carefully perusing the witness statements is when he formed that opinion.

3. The Defence Counsel Mr. Oduor opposes the application saying it has taken too long to reach that decision and that the trial of the accused be delayed.

4. This court observes that it is in the discretion of the DPP to decide whether to proceed with the charge before court or to terminate proceedings against the accused person. As long as they give reasons for withdrawal and the withdrawal is in good faith, the Court should not compel the DPP to proceed with a charge they know they cannot sustain.

5. This court has heard Mr. Okachi SPPC and Mr. Oduor in their submissions for and against the withdrawal of the charge. 5 witnesses are before the court.

6. In my view, the fact that it has not been shown that the withdrawal of the charge is laced with malice or bad faith and the fact that Mr. Okachi has not been in conduct of this matter from its commencement is a clear indication that he has given it serious thought and therefore he should be given the benefit of doubt and an opportunity to exercise his discretion in the matter to bring an appropriate charge against the accused person.

7. Accordingly, I am satisfied that the application for withdrawal of the charge of murder is in good faith. The same is hereby allowed. The charge of against the accused person **Peter Oindi Anyanga** be and is hereby withdrawn under **Section 87(a) of the Criminal Procedure Code**.

8. As the Prosecution have clearly indicated that they intend to charge him with Manslaughter, the accused is hereby discharged under **Section 87(a) of the Criminal Procedure Code**.

9. He is however directed to appear before the **Principal Magistrate's Court at Bondo** on **31/10/2018** to take a Plea on a lesser charge of Manslaughter. The bond executed by the accused person shall be extended until **31/10/2018**.

10. The accused is however, at liberty to apply for the subordinate court for the same trial terms herein to apply, after he has taken the said Plea. **Orders accordingly. The File is herein closed.**

**Dated, Signed and Delivered at SIAYA this 30<sup>th</sup> Day of October 2018.**

**R.E. ABURILI**

**JUDGE**