



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT GARISSA**  
**CRIMINAL CASE NO. 10 OF 2015**

**REPUBLIC.....PROSECUTOR**

**VS-**

- 1. JULIANA MWIKALI KITEME**
- 2. GRACE MUMBI MUE**
- 3. JOSEPH NGUMBAU MUTISYA**
- 4. AGNES MUTHONI MUTISYA.....ACCUSED**

**RULING**

The four accused persons herein were brought to this court on a charge of murder contrary to section 203 as read with section 204 of the Penal Code. The particulars of the offence are that on 14<sup>th</sup> April 2015 at Kanan village Ngaie location in Kyusosub county within Kitui County jointly murdered MUSYOKI MWANGANI.

They were initially brought to court on 5<sup>th</sup> May 2015. They pleaded not guilty to the charge on 3<sup>rd</sup> June 2015. From then they have come to court on several mentions but no evidence has been recorded as yet. Though released on bond they have been in custody due to poverty.

On 4<sup>th</sup> May 2017 the prosecution counsel Mr. Okemwa informed the court about a possible reconciliation which he received from an elder from the area where the incident occurred.

Subsequent to that affidavits signed by the mother and brother of the deceased were filed in court on 4<sup>th</sup> May 2016 to the effect that traditional compensation in the form of livestock that is cows had been paid in line with Kamba customs and traditions. On perusal of the same Mr. Okemwa the prosecuting counsel asked this court for the Director of Public Prosecutions to discontinue the criminal proceedings herein under section 25 of the Office of The Director of Public Prosecutions Act 2013. Mr. Nyasani for the defence did not oppose the request of the prosecuting counsel.

I have perused the affidavits of KATONYE MWANGANGI the mother of the deceased and STEPHEN 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 a handwritten agreement on the mode of payment was also filed.

Under Article 159(2)(c) of the Constitution of Kenya 2010 this court is enjoined to promote traditional reconciliation, subject to certain limitations under Article 159(3). The relevant Article provides as follows-

**159(2)In exercising judicial authority,the courts and tribunals shall be guided by the following principles-**

**(c)alternative dispute resolution including reconciliation,mediation,arbitration and traditional dispute resolution mechanisms shall be promoted,subject to clause(3)**

**(3)Traditional dispute mechanisms shall not be used in a way that-**

**(a) contravenes the Bill of Rights**

**(b) is repugnant to justice and morality or results in outcomes that are repugnant to justice or morality,or**

**(c) is inconsistent with this Constitution or any written law.**

Having considered the request of the Prosecuting Counsel on behalf of the Director of Public Prosecutions 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 in the Constitution.

I thus allow the request of the Prosecuting Counsel and order that the Criminal proceedings herein against all the accused persons be and are hereby discontinued. All the four accused persons herein are thus hereby discharged under Article 157 of the Constitution and section 25 Of the Office of the Director of Public Prosecutions Act 2013.

**Dated and delivered at Garissa this 17<sup>th</sup> May 2017.**

**GEORGE DULU**

**JUDGE**