



**REPUBLIC OF KENYA**

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

**CRIMINAL CASE NO. 4 OF 2015**

**REPUBLIC ..... PROSECUTOR**

**V E R S U S**

**IBRAHIM ALOW HUSSEIN ..... ACCUSED**

**RULING**

The accused Ibrahim Alow Hussein has been charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code. The particulars of the offence are that in the night of 1st March 2015 at Degodia market Rhamu township within Mandera County murdered Ibrahim Alio Hassan.

An information containing the charge and particulars of the offence was filed on 18th March 2015, and he was brought in court on the same day. He pleaded not guilty on 3rd of June 2015.

After a number of adjournments of the case, on the 3rd of May 2016, the learned Prosecuting Counsel Mr. Okemwa orally asked this court to sanction withdrawal of the criminal proceedings against the accused under section 25(1) of the Office of the Director of Public Prosecutions Act.

Counsel supported the verbal request with a letter dated 18th April 2016 to their office from the DCIO Mandera North, and another letter dated 27th April 2016 from the Prosecuting Counsel in Mandera.

According to the Prosecuting Counsel, the police have confirmed that they are not able to trace various witnesses in the case. Counsel stated that more than one person had been killed in Mandera between two clans the Degodia and the Gorre clans, and that this was one of those killings. Counsel gave an example of documented in the police file Cr. 522/03/2015 case file 5/2015, where a person from the Degodia clan was killed as a consequence of this incident.

Counsel submitted that as a consequence witnesses were not available and emphasized that the police had so far made all necessary efforts to trace witnesses in vain. In addition, the evidence of the alleged eye witness Momina Muhumed Yusuf a sister of the deceased is that the culprit was Mohamed Gamadere who ran away, while in the present case the accused is Ibrahim Alow Hussein a totally different name.

In those circumstances the prosecuting counsel this sought courts consent to withdraw the case.

Mr. Nyasani learned counsel for the accused did not object to the request for the withdrawal of the criminal proceedings by the State. Counsel however added that the prosecution should have asked to withdraw the case long time ago, as they were aware of the difficulties of tracing witnesses in this case all along.

Having considered the application made by the State for withdrawal of the criminal proceedings against the accused herein, I am of the view that this court cannot and should not refuse that application.

It is obvious that the prosecution are not able to get relevant witnesses. The trial has not commenced yet. The police have confirmed in writing that because of inter clan issues between the Degodia and Garre clans, it is not practicable in the foreseeable future, to get witnesses to testify in the matter. The accused in the meantime has been in custody awaiting trial.

In my view, the accused cannot remain in custody indefinitely when the State is not able to trace

witnesses. Withdrawal of the criminal proceedings does not mean that when witnesses are traced, the case cannot commence and be heard. In the circumstances of this case, I find that the prosecution has given a sufficient reasons to support their request to withdraw the criminal proceedings, as the accused is also entitled to his liberty.

This court has powers under section 25(1) of the office of the Director of Prosecutions Act to sanction a request by the prosecution to discontinue criminal proceedings.

I thus allow the application and order that the criminal proceedings herein be and are hereby discontinued. The accused is thus discharged from custody.

**Dated and Delivered at Garissa this 14th day of June 2016.**

**GEORGE DULU**

**JUDGE**