

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT GARISSA
CRIMINAL CASE NO. 32 OF 2012

REPUBLIC.....PROSECUTOR

V E R S U S

ISHAD ABDI ABDULLAHI.....ACCUSED

RULING

This criminal case commenced in the year 2012 the accused Ishad Abdi Abdullahi has been charged with murder contrary to section 203 as read with section 204 of the Penal Code. The particulars of the offence are that on 25th September 2012 at Arer village Madogo Location Bula District within Tana River County murdered Hassan Dahir Barre.

The prosecution has called 4 witnesses. Now the Director of Public Prosecutions through prosecuting counsel Mr. Okemwa, has requested this court to allow the discontinuance of the criminal proceedings under Article 157 of the Constitution and Section 25(1) of the Office of the Director of Public Prosecutions Act. Counsel has relied on an agreement reached between two families, the family of the deceased on the one hand, and the family of the accused on the other hand.

I have perused the documents filed including an affidavit from the wife of the deceased Binto Ibrahim Barre which was thumb printed. The information contained therein is that both the deceased and the accused come from the Aulihan clan, but from different sub clans. That they have met and decided to compromise the matter through blood compensation as allowed under custom and Islamic law.

An agreement dated 19th December 2015 was also filed signed by several elders, and it is stated therein as follows:-

“ the deliberations was that the Guled family of Irshad who is in custody to pay 40 camels equivalent to Kshs 4,400,000/= current market price to the family of the deceased. The family of the alleged assailant paid the compensation without any hesitation, and the elders unanimously agree to have Irshad released from custody.”

The meeting was chaired by Bulle Abdullahi Gedi who also addressed a letter on the same agreement to the Director of Public Prosecution office in Garissa on 19th December 2015. The said letter has also been filed.

The Prosecuting Counsel has urged the court in determine this matter to consider a ruling delivered in Nairobi High Court Criminal Case No. 86 of 2011 Republic -vs- Mohamed Abdow Mohamed, in which the court allowed the discontinuance of criminal proceedings.

Under Article 157 of the Constitution, the Director of Public Prosecution (DPP) is mandated to exercise powers of prosecution and may ask the court for discontinuance of criminal proceedings at any stage before judgment. If the discontinuance is after the prosecution has closed its case, then the accused will be acquitted. In all other cases, such discontinuance will result in a discharge for the accused and he or she may be charged on the same facts and evidence.

Section 25 (1) of the Office of the Director of Public Prosecutions Act, puts into effect the provisions of the Constitution with regard to discontinuance of criminal proceedings.

Considering that the two families of the victim and the accused herein, have agreed and compensation has been paid already, in my view the request of the Director of Public Prosecutions is justified. I thus allow the request for discontinuance of the criminal proceedings herein. The criminal proceedings herein are therefore herewith discontinued and the accused is discharged forthwith.

Dated and delivered at Garissa this 25th day of October 2016.

GEORGE DULU

JUDGE