



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KAKAMEGA
CRIMINAL (MURDER) CASE NO. 24 OF 2012

REPUBLIC.....PROSECUTOR

VERSUS

CETRIC LIKALAMU.....ACCUSED

RULING

Introduction

1. When this matter came up before me on 04.10.2016 Mr. Mukabwa, counsel for the accused person sought to be released from the brief for reasons that he could not withstand the idea of the accused person going through a trial when he (accused) had already pleaded guilty to the charge of manslaughter and was only awaiting sentence after mitigation. Counsel argued that the accused pleaded guilty to the lesser charge of manslaughter on 24.06.2016 (though the record indicates it was 24.02.2016.)
2. Mr. Jamsumbah, for the prosecution insisted that the case was for hearing as ordered on 09.06.2016

Background

3. The accused herein, was originally charged with murder contrary to section 203 as read with section 204 of the penal code, the particulars being that on the 9th of July, 2012 at Shivagala area in Kakamega South District within Western Province, he murdered one Glorious Awino. He pleaded not guilty and the case was fixed for hearing on 07.03.2013. He was also granted bond of kshs.500,000/= with one surety of a similar amount. For a considerable period of time thereafter, the case did not proceed to hearing, due to lack of a mental assessment report. The plea was taken afresh on 05.03.2014 and case fixed for hearing on 17.09.2014.
4. After several abortive efforts to hear the case, the accused appeared before Hon. Njoki Mwangi Judge on 02.12.2015 when Mr. Mukabwa informed the court that the accused was willing to plead guilty to the lesser charge of manslaughter. As the state was not prepared for the plea bargain on that date, Mr. Ng'etich , Prosecution counsel asked for time to consult his superiors with a view to confirming whether the offer for plea bargain was acceptable.
5. The matter eventually came up before Hon. Lady Justice Njoki Mwangi Judge on 24.02.2016 during which the prosecution substituted the information of murder with one of manslaughter. The accused pleaded guilty to the charge of manslaughter. He also agreed with the facts when they were read to him. He was accordingly convicted of the same.
6. After mitigation, the court ordered that sentencing would be on 03.03.2016. On 03.03.2016, the court, upon realizing that Section 137f of the Criminal Procedure Code had not been complied with expunged

the proceedings of 24.02.2016 and subjected the accused person to a fresh plea. The accused pleaded guilty, but Mr. Ng'etich who appeared for the state asked for time to read the facts, and to avail the victim impact assessment report. The matter was stood over to 10.03.2016 at 2.30 pm for facts.

7. On 10.03.2016, the prosecution informed the court that the facts were not ready on grounds that the family of the deceased had objected to the facts that were to be given by the state. The court noted that the facts of any case were gleaned from witness statements and not from the family of the victim. Nonetheless, the case was adjourned to 20.04.2016 for reading of the facts but on that date, the parties were all absent from court. The case was then fixed for mention on 07.06.2016 for reading of the facts.

8. On the 07.06.2016, Mr. Oroni prosecuting counsel holding brief for Mr. Ng'etich asked for another date to allow Mr. Ng'etich attend court for giving of facts. In a turn of events during the mention on 09.06.2016, the case was fixed for hearing on 04.10.2016.

Analysis and Determination

9. The question that arises for determination is whether there is a plea of guilty entered in this case on the lesser charge of manslaughter, and if not, for which offence shall the case be tried? From a careful analysis of the record, the plea of guilty entered on 24.02.2016 was expunged from the record by the court's order dated 03.03.2016 when the accused person took the plea afresh. Facts were to be given later, but to date, no facts have been given for reasons advanced by prosecution counsel on 10.03.2016. The record also shows that the murder charge no longer subsists, the prosecution having substituted the same with the lesser charge of manslaughter on 24.02.2016.

Conclusion

10. What is the effect of all the above? That though the accused person pleaded guilty to the charge of manslaughter on 03.03.2016, the plea is not unequivocal because facts have not been read and admitted or controverted by him. Secondly, the information of which the accused stands charged is one of manslaughter and not one of murder. The prosecution has not made any application to resubstitute the manslaughter information with one of murder. What all this boils down to is that the hard positions taken by counsel are not supported by the record. If the resubstitution of the information is not done, the prosecution has to proceed to give the facts of the case so that the plea bargain process can be brought to a close.

11. With the above background, I do not think that there is any reason why Mr. Mukabwa should be released from his brief in this matter.

Ruling delivered, dated and signed in open court at Kakamega this 11th day of October, 2016

RUTH N. SITATI

JUDGE

In the presence of:-

.....Mr. Jamsumba.....for the State

.....Mr. Mukabwa (present).....for Accused

.....Mr. Polycarp.....Court Assistant