

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT GARISSA

CRIMINAL CASE NO. 12 OF 2012

FORMERLY HIGH COURT OF KENYA CRIMINAL CASE NO. 22 OF 2011

REPUBLIC.....PROSECUTORVERSUS

ABDULLAHI ADAN ABDILLE.....ACCUSED

RULING

This is an old case that was transferred to Garissa from Nairobi. The case was first mentioned in High Court Garissa on 13th February 2012. The record shows that the witnesses were in court on one occasion only during the case's lifetime in Garissa. On 12th June 2012 the prosecution has five witnesses in court according to the file records. However, the hearing did not commence on that day for reasons that the prosecution had not supplied the defence with bundles.

On the other occasions the matter was mentioned in court on dates fixed for hearing, the state did not have witnesses and the defence has always raised concern over the delay of this matter.

On 26th March 2014, the learned state counsel in charge of the prosecution in this case applied to be allowed to withdraw the case. The reasons advanced were that the police have not been able to secure the attendance of witnesses despite their concerted efforts. The learned state counsel sought to discontinue the prosecution under Article 157 (6) of the Constitution and section 25 (1) of the Office of the Director of Prosecutions Act.

Article 157 (6) (c) allows the Director of Public Prosecutions to discontinue at any stage before judgment is delivered any criminal proceedings instituted by the Director of Public Prosecution or taken over the DPP. This can only be done with permission of the court (Article 157 (8)). If such discontinuance of proceedings is done after the prosecution has closed the accused person shall be acquitted. The Article does not say what happens where the discontinuance is done before the prosecution has closed its case.

Section 25 (1) of the Office of the Public Prosecutions Act also provides similarly that the DPP may with permission from the court discontinue the proceedings commenced by him or taken over by him.

I have considered this application. The defence is agreeable to the application. I have no reason to withhold the permission and therefore, this court allows the DPP to discontinue these proceedings against the accused. In view of this I hereby discharge Abdullahi Adan Abdille. Unless for any other lawful reason he is held in custody, he shall be set at liberty forthwith. It is so ordered.

Dated, signed and delivered on 27th March 2014.

S.N.MUTUKU

JUDGE