

REPUBLIC OF KENYA

High Court at Nakuru

Criminal Case 9 of 2012

REPUBLIC.....PROSECUTOR

VERSUS

ROBERT KIPKOSGEI KOIMA.....1ST ACCUSED

COLLINS KIRWA KOIMA.....2ND ACCUSED

RULING

Collins Kirwa Koima is charged together with Robert Kipkosgei Koima the 1st Accused with the murder of his brother, Kipkemoi Koima.

Miss Idagwa learned State Counsel has applied under the provisions of Article 157(6)(c) of the Constitution of Kenya, 2010 to discontinue the charges against the 2nd Accused in this matter. The discontinuance of charges against an accused is subject to the permission of the court under Article 157(8) of the said Constitution of Kenya.

Learned State Counsel submitted and Miss Naija learned counsel for the accused agreed that there was in the statements of witnesses, no evidence connecting the 2nd accused with the murder or otherwise, killing of the deceased.

Article 157(7) provides that if the discontinuance of any proceedings under Clause (6)(c) takes place after the close of the prosecution's case, the defendant shall be acquitted.

In this case no evidence has in fact been tendered against the accused. It is apparent from what learned State Counsel said that there was, and there is, no incriminating evidence against the accused. In the circumstances the proper order to make is firstly -

- (1) to grant permission to the learned State Counsel to discontinue the prosecution of the accused, and which is hereby granted,
- (2) to acquit and discharge this accused of charge of murder against him, which is hereby also ordered, which is hereby also ordered. This accused be released forthwith unless otherwise lawfully held.

There shall therefore be orders accordingly.

Dated, signed and delivered at Nakuru this 29th day of October, 2012

M. J. ANYARA EMUKULE

JUDGE