



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI**

MILIMANI LAW COURTS

Misc Crim Appli 396 of 2006

SHEN ZHANGHUA.....APPLICANT

VERSUS

REPUBLICRESPONDENT

R U L I N G

This matter has come before me to challenge the refusal of Chief Magistrate's Court Makadara to allow the Complainant in Makadara **Criminal Case No. 2850 of 2006** to withdraw the complaint under **Section 204** of the **Criminal Procedure Code**. The Complainant had filed a complaint of **assault causing actual bodily harm** contrary to **Section 251** of the **Penal Code** with Muthaiga Police Station following which the accused person **SHEN ZHANGHUA** was arrested and charged with the said offence. The accused was arraigned in court on 19th May 2006 where he pleaded not guilty to the offence.

On 10th July 2006, before **Mr. Kassan DMII** as per court Coram or **Mr. Ademba, RM** as per the latter proceedings of the court (it is not clear who handled the application from the record) the Complainant applied to withdraw the complaint under **Section 204** of the **Criminal Procedure Code** citing under oath that he had decided to forgive the accused person. The Court reserved the case for ruling and three days later on 13th July 2006 the learned trial magistrate declined to allow the withdrawal by the Complainant and directed that the matter should proceed to hearing.

This court sent the file back to the trial court with directions that a considered ruling be given why the application for withdrawal was denied. The ruling made by the court in short gives the reason to decline withdrawal as the fact that the trial court was not satisfied that the grounds put forth by the Complainant were sufficient. The trial court also questioned the sudden change of heart by the Complainant not to pursue the complaint.

It is quite clear that the learned trial magistrate is ignorant of the two factors. One, that under **Section 176** of the **Criminal Procedure Code**, the court is enjoined to promote reconciliation to parties in a misdemeanour, even on its own motion. Assault contrary to **Section 251** of the **Penal Code** is a misdemeanour and is one of the best cases where **Section 176** of the **Criminal Procedure Code** can be invoked by the court on its own volition, in a bid to reconcile parties and end the matters in court.

That secondly **section 204** of the **Criminal Procedure Code** requires the Court to be satisfied that

there are sufficient grounds of permitting the Complainant to withdraw a complaint. At the time the Complainant made his application, the court ought to have clarified the grounds given by the Complainant for making the application in order to satisfy itself that such grounds were sufficient. The Complainant gave a very good ground considering that the complaint before the court was one of personal injury to the Complainant. The ground he gave that he chose to forgive the accused person was a very good ground and in any event was more than sufficient to justify the withdrawal of the complaint.

The learned trial magistrate should be made aware and encouraged, and I direct the Magistrate in Charge of the station to disseminate this important information in the interest of justice, that it is of paramount importance to the judiciary that courts reduce the back log within the courts by all lawful means including the application of **Section 176** of the **Criminal Procedure Code** in cases involving misdemeanours and **Section 204** of the **Criminal Procedure Code** in all other cases except capital offences, so long as it is done in good faith, integrity and judiciously.

With that I direct that the original file herein be placed before the Magistrate-in-charge of Makadara, **Hon. Mrs. Grace Nzioka** on 18th October 2006 to deal with it as required and I draw her attention to the provision of **Section 176** of the **Criminal Procedure Code** and **Section 204** of the **Criminal Procedure Code** to act accordingly.

Dated at Nairobi this 18th day of October 2006.

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LESIT, J.

JUDGE

Read, signed and delivered in presence of;

Applicant present

Tabitha – Court clerk

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LESIT, J.

JUDGE