

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MACHAKOS
HIGH COURT CRIMINAL CASE NO. 87 OF 2004

REPUBLIC ::: PROSECUTOR
VERSUS
1. JAMES MWEU MUIA
2. FREDRICK MUTUKU NYAMAI
3. JUSTUS MUTUA NZIOKA ::::::::::::::::::::::::::::::::::::::;::::: ACCUSED

R U L I N G

When the three accused persons in this case came up for plea on 6/12/04, Mrs Nzei counsel for 1st and 2nd accused persons offered plea on lesser charge of manslaughter. Mr O’Mirera told the court that the plea was acceptable and the information on manslaughter was filed and upon reading the charge to the accused persons, they denied the charge.

Upon denial of the plea, Mrs Nzei now urges court that since the accused pleaded to the charge of manslaughter that is the charge the court should proceed with and at the end of it, if the court finds that the accused are guilty of murder then they will be sentenced accordingly.

Mr O’Mirera argued that plea bargaining is done on the basis of give and take so that if the accused are not pleading guilty to the offence of manslaughter, the court should revert back to the charge of murder.

It is Mrs Nzei who offered a lesser plea on charge of manslaughter. The court believed she had got instructions.

Plea bargaining is done without prejudice basis, that is, on the basis that the accused person are accepting the charge, so that if the accused deny the charge the offer of a lesser charge is withdrawn. The court cannot accept Mrs Nzei’s argument because if the court accepted that line of argument then plea bargaining would have no meaning.

People would offer plea on lesser charge and turn round and deny the offence once they were charged with the lesser offence so that once they are charged with lesser offence they are entitled to bond unlike murder charges. Offers of less plea would not be done in good faith. The court will allow the state to withdraw the charge of manslaughter and proceed with the charge of murder.

Dated at Machakos this 14th day of December 2004

R.V. WENDOH

JUDGE