



**Republic v Guyo alias Esther (Criminal Case E006 of 2025)
[2025] KEHC 4076 (KLR) (2 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 4076 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MAKADARA
CRIMINAL CASE E006 OF 2025**

**J WAKIAGA, J
APRIL 2, 2025**

BETWEEN

REPUBLIC PROSECUTOR

AND

HALIMA WAKO GUYO ALIAS ESTHER ACCUSED

RULING

1. The accused was initially charged with murder at the High Court Criminal division at Milimani in criminal case no E095 of 2021 and on 31st December 2021 a plea of not guilty was duly entered against the same .
2. For the purposes of this ruling, on 25th October 2022, the accused and the prosecution entered into and executed a plea bargain agreement which was aimed at reducing the charges herein from murder to manslaughter .
3. On the 4th February 2025, the said plea bargain agreement was presented to court and the court Muigai J rejected the said plea agreement as per the ruling thereon and directed that the matter proceed for hearing in any other court having rejected the plea bargain/
4. Following the establishment of this court, on 12th February 2025 , this cause was transferred to this High Court Criminal registry and on 4th March 2025, this court gave directions on hearing and set up the case for hearing on 26th March 2025.
5. On the scheduled date for hearing, Ms Ogwen for the state informed the court that they had entered into afresh plea agreement which they wanted the court to record and accept. Mr . Sang for the accused person confirmed the position.



6. The court then invited the parties to address it on the effect of the earlier rejection of the plea bargain agreement by this court and whether the court had jurisdiction to entertain fresh plea bargain and the subject matter of this ruling,

Submissions

7. It was submitted by Ms Ogwenso that the application was anchored under section 137J of the criminal procedure code part 2 thereof where it is stated that once the court rejects plea bargain, the matter is to proceed afresh before another court and that her understanding was that the parties can execute fresh plea bargain provided that they are not related to the same facts.
8. It was contended that the accused can send a fresh letter of plea bargain in support of which she relied on the case of Eddied Mandi Jalani & 2 others [2019] eKLR in support of her contention that they were starting afresh upon the earlier rejection under the provisions of section 137L (2) of CPC
9. Mr Sang for the accused supported the contention that this was a fresh matter and that the court should determine whether the decision to enter into a plea agreement was in the best interest of justice since the father of the victims has no objection to the same and that in exercising judicial authority under Article 159 the court should take into account public interest.

Determination

10. The only issue for the court's determination is whether upon rejection of plea agreement by court, the same can be reintroduced as the parties herein are attempting to do?
11. The answer to this question has been provided for by statute. In section 137 J where the court rejects a plea bargain, it shall record the reasons for such rejection and inform the parties. A plea of not guilty shall therefore be recorded. Under subsection 2 thereof, where the agreement has been rejected by the , the matter shall proceed for hearing before another court unless the accused waives his/her right. The record of the proceeding in this matter confirms that the court complied with this provision of the law .
12. Section 137H (3) provides that upon rejection of plea agreement there shall be no further plea negotiations in the trial relating to the same facts and at (4) where the court has rejected a plea agreement under this section no party shall appeal against or apply for review of the order of the court rejecting the agreement .
13. The accused and the Prosecution submitted that this were fresh facts but I note that the mere fact that this matter was transferred from the Criminal registry at Milimani to this registry does not constitute fresh matter.
14. A clear reading of the statute shows that the parties can not re introduce a fresh plea bargain the same having been rejected by this court neither can they apply for review of the order of rejection as the agreement herein is based on the same facts as those that were placed before the court at Milimani.
15. I have looked at the case of Eddied Mandi Jilani (supra) submitted by the prosecution and note that the same is in respect of the court setting aside a sentence pursuant to a plea agreement on the ground of fraud and misrepresentation under section 137L (2) which does not assist the parties herein in the face of express statutory provision prohibiting the re-opening of rejected plea agreement Article 159 of *the constitution* not withstand .
16. I therefore decline to exercise jurisdiction. The DPP is at liberty to withdraw this cause and to charge the accused as fresh should they wish to file fresh plea agreement and it is Ordered.



SIGNED DATED AND DELIVERED AT MAKADARA THIS 2nd DAY OF APRIL 2025

J. WAKIAGA

JUDGE

In the presence of :

