



**Republic v Mariko (Criminal Case E001 of 2025)  
[2025] KEHC 6124 (KLR) (15 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 6124 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT GARISSA  
CRIMINAL CASE E001 OF 2025**

**JN ONYIEGO, J  
MAY 15, 2025**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**HASSAN SALAT MARIKO ..... ACCUSED**

**RULING**

1. Accused person herein is charged with the offence of murder contrary to Section 203 as read with Section 204 of the *Penal Code* (Cap.63), Laws of Kenya. Particulars of the offence are that on the 26<sup>th</sup> day of December 2024, at Sarira area of Sankuri ward within Garissa County, jointly with others not before court they murdered Jacob Maluki Mwanzia.
2. Having pleaded not guilty, the matter was fixed for hearing. However, before hearing could commence, the victim’s family and accused’s family engaged in negotiations to settle the matter out of court.
3. Consequently, elders from both sides met and settled on compensation of the victim’s family at Kshs.850,000/= vide a settlement agreement dated 11-02-2025. The said agreement was duly filed in court for reference and consideration.
4. Subsequently, they approached the ODPP for diversion and then withdrawal of the case. As a result, the office of the DPP prepared a diversion agreement dated 14 -05-2025 which was duly signed by the investigating officer, prosecution and defence counsel. Without hesitation, the ODPP made an application to have the case diverted and then discharge the accused. The prosecution counsel submitted that the case was suitable for diversion and also in the spirit of promoting Alternative Justice System (AJS) taking into account that parties have reconciled and that compensation of blood money has been made.



5. Mr. Garane for the accused associated himself with the prosecution's sentiments. Learned counsel urged the court to take into account the spirit of alternative dispute resolution as enshrined in Art 159 of the *constitution*.
6. I have considered the application herein. It is trite that the ODPP has the constitutional mandate to institute and discontinue any criminal proceedings. However, such termination is subject to court's discretion and approval.
7. I am also aware of the spirit under Article 159(2)(c) of the *constitution* which approves traditional method of dispute resolution. In this case, the accused is charged with murder which is a felony. Under the diversion policy guidelines, diversion is only applicable in the following circumstances;
  - i. Adult offenders who have committed petty offences.
  - ii. All child offenders.
  - iii. Vulnerable persons irrespective of the offence.
  - iv. Cases involving felony offences where exceptional circumstances exist.
8. In this case, none of these circumstances is available. There are no exceptional circumstances to justify diversion in the instant case. I have looked at the two authorities cited by the prosecution being Nairobi criminal case number 86 of 2011 between Republic vs Mohamed Abdow Mohamed and Garissa Criminal case number 10 of 2015 between Republic vs Juliana Mwikali Kiteme and 2 others where both courts discharged the accused on account of reconciliation and payment of blood money as compensation. In my view, the two decisions had nothing to do with discharge on account of diversion.
9. The best route would be plea bargaining. Accordingly, the application is rejected and parties advised to consider plea bargaining as an option.

**DATED, SIGNED AND DELIVERED IN OPEN COURT THIS 15<sup>TH</sup> DAY OF MAY 2025**

**J. N. ONYIEGO**

**JUDGE**

