



REPUBLIC OF KENYA



Republic v GK (Criminal Case E018 of 2022) [2023] KEHC 4160 (KLR) (11 May 2023) (Ruling)

Neutral citation: [2023] KEHC 4160 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BOMET
CRIMINAL CASE E018 OF 2022**

RL KORIR, J

MAY 11, 2023

BETWEEN

REPUBLIC PROSECUTOR

AND

GK ACCUSED

RULING

1. G.K (name redacted) was charged with the offence of murder contrary to Section 203 as read with Section 204 of the *Penal Code* (Cap 63 Laws of Kenya). The particulars were that on July 3, 2022 at around 1600hours at Kimagor Village in Chemaner Location Bomet East Sub-County within Bomet County murdered Festus Korir.
2. When the minor offender was first presented before this court on July 21, 2022, the court took note of his young age and examined him to confirm that he understood the proceedings against him. The court directed the filing of a social inquiry report by the Probation officer and the Children’s officer. The court further directed that the minor offender be remanded at the Kericho Juvenile Remand Home.
3. When the matter came up for plea on July 29, 2022. Both the prosecution and defence counsel told the court that the minor offender did not seem to comprehend the gravity of the charge against him and requested the court to defer plea pending the filing of the psychosocial report by the Children’s Officer and the Probation Officer.
4. The minor offender took plea on September 21, 2022 after the court satisfied itself that he understood the proceedings and was capable of taking plea. When the charge was read to him he answered that “ It is true.”
5. The Prosecution requested for time to come and read the facts and the Court adjourned the matter to October 4, 2022. On that date the defence counsel was absent and matter could not proceed.



6. Subsequently Mr Njeru the Prosecution Counsel informed the court that the DPP wished to review the evidence in the case. He later told the court that they were ready to proceed with the charge.
7. The matter came up for plea on November 11, 2022 the court reminded the minor of the earlier proceedings and the prosecutor proceeded to read the facts to which the minor offender did not respond. The court broke down the facts to aid minor offender understand and respond. He persisted in his silence and the court therefore entered a plea of not guilty and set the matter for pre-trial.
8. When the matter came up for pre-trial directions on March 22, 2023, Prosecution Counsel Mr. Njeru, addressed the court. He told the court that he had once more reviewed the evidence after the minor's change of plea. That from his review there was a possibility that there were adults involved in the crime. That consequently he had decided to have the matter proceed by public inquest. Counsel submitted that the application was made under Article 147 6 (C) and 157 (9) of the Constitution and Section 5(1) (a) of the ODPP Act. He stated that the power to enter the nolle prosequi was delegated to him by Legal Notice No 134/2010. He informed the court that the Prosecution did not intend to pursue the prosecution of the minor offender. He submitted that they had decided to proceed by way of a public inquest.
9. Learned Defence Counsel Mr J.K. Koech in his address to the court told the court that the DPP had brought the application to their knowledge and that they had no objection if the termination of the case and the route taken by the Prosecution would serve the interests of justice.
10. Black's Law Dictionary, 8th edition defines a nolle prosequi as "a legal notice that a law suit or prosecution has been abandoned."
11. The powers of the DPP to enter a nolle prosequi are derived from Article 157(6) (c) of the Constitution which stipulates that: -
 - "(6) The Director of Public Prosecutions shall exercise State powers of prosecution and may-
 - (c) subject to clause (7) and (8), discontinue at any stage before judgment is delivered any criminal proceedings instituted by the Director of Public Prosecutions or taken over by the Director of Public Prosecutions under paragraph (b)."
12. Article 157 clauses (7) and (8) provides as follows: -
 - "(7) 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.
 - (8) The Director for Public Prosecutions may not discontinue a prosecution without the permissions of the court." (Own emphasis).
13. Section 25(1) of the ODPP Act reproduces Article 157 (6) of the Constitution thus: -

"The Director may, with the permission of the court, discontinue a prosecution commenced by the Director, any person or authority at any stage before delivery of judgement."
14. I have considered the submissions of Counsel. This case has come before this court several times without the prosecution moving the matter forward. It appears to the court that the charge was not on firm feet when the prosecution sought time to review the evidence. The minor offender is charged



with the offence of murder which, according to the submission of the prosecution, was gruesome as the victim was mutilated and stashed in a cement bag and left in the thicket. The Prosecution suspected the involvement of other people in the commission of the offence and to get to the bottom of it, have requested to proceed by way of inquest. I find that to be a reasonable proposition.

14. Section 82(1) of the CPC on the other hand provides that: -

“In any criminal case and that any stage thereof before verdict or judgement, as the case may be, the Director of Public Prosecutions may enter a nolle prosequi, either by stating in court or by informing the court in writing that the Republic intends that the proceedings shall not continue, and thereupon the accused shall be at once discharged in respect of the charge for which the nolle prosequi is entered, and if he has been committed to prison shall be released, or if on bail his recognisances shall be discharged; but discharge of an accused person shall not operate as a bar to subsequent proceedings against him on account of the same facts.”

14. In the end, considering the circumstances of the case as outlined by the prosecution, I find the request by the DPP to enter a nolle prosequi to be legal and justified. I see no prejudice to be suffered by the minor offender. I accept the Nolle Prosequi and order that the prosecution against the minor G.K shall not continue.

14. He is discharged and set at liberty forthwith unless otherwise lawfully held.

Orders accordingly.

RULING DELIVERED, DATED AND SIGNED AT BOMET THIS 11TH DAY OF MAY, 2023

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R. LAGAT-KORIR

JUDGE

Ruling delivered in the presence of Mr. Waweru for the State, Mr. J. K Koech for the Minor Offender and Siele (Court Assistant)

