



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERICHO

CRIMINAL CASE NO.25 OF 2015

REPUBLIC.....PROSECUTOR

- V E R S U S -

SKC.....ACCUSED

R U L I N G

1. The Accused Person in this case SKC was charged with Murder Contrary to Section 203 as read with Section 204 of the Penal Code.
2. The particulars of the charge are that on 2/12/2015 at [particulars withheld], Bureti Sub-County within Kericho County, the Accused Person murdered SYLVESTER ROP.
3. The Doctor who examined the Accused Person said in the Psychiatrist Report that the Accused Person has some elements of retardation but he could stand trial.
4. The Court referred the Accused Person to Mathari Hospital where he stayed for one year. When he recovered he was brought back to Court and he took plea.
5. Since 2015 when the Accused Person was arrested, the witnesses have never come to Court to testify. The Investigating Officer filed an affidavit dated 16/9/2020 in which he stated that he took over this case from CPL.

George Maitha on 27/2/2020.
6. The Investigating Officer said he conducted independent investigations to find out why the witnesses are not willing to come to Court and he established that the witnesses are family members of the Accused as the Deceased was the father of the Accused Person.
7. The witnesses wish to have this case withdrawn since the Accused was mentally unstable at the time of the commission of the offence.
8. The Accused has since received treatment at Mathari Hospital and the family has been able to perform a traditional cleansing known as Kipkaa and they do not wish to come to Court to testify.
9. The Investigating Officer attached a list of the clan and family members which does not give details of the cleansing ceremony and neither does it state the relationship between the people on the list and the Accused Person.
10. The DPP made an oral application seeking to withdraw this case under Article 157 (6) (c) of the Constitution.
11. The only issue for determination is whether the power to enter the 'NolleProsequi' is being exercised in accordance with the provisions of the Constitution;
12. The DPP is required to seek the court's permission when discontinuing a prosecution and is also required to take into account the public interest, fair administrative action and avoid abuse of the legal process.
13. Article 157 (8) requires that the DPP seeks leave of the Court to discontinue a case Under Article 157 (6) (c).
14. The Application to withdraw the case Under Article 157 (6) (c) was not opposed by the Defence.
15. I find that there are valid reasons for seeking to withdraw the charges against the Accused Person. The Accused Person has been in custody since the year, 2015 when he was arrested.

16. The Accused Person has undergone Psychiatrist treatment at Mathari Hospital and the family is willing to assist him to continue with medication.

17. The Application to withdraw the charges the Accused Person is facing Under Article 157 (6) (c) is allowed.

18. The Accused Person is accordingly discharged Under Article 157 (6) (c) and I direct that the Accused Person be released from custody unless lawfully held for any other reason.

Delivered, Dated and Signed at Kericho this 2nd Day of October, 2020

A.N. ONGERI

JUDGE