

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KITUI

CRIMINAL CASE NO. 9 OF 2018

REPUBLIC.....PROSECUTOR

VERSUS

JOSEPH KASIMU MULE.....ACCUSED

R U L I N G

1. **Joseph Kasimu Mule**, the accused herein is charged with the offence of **Murder** contrary to **Section 203** as read with **204 of the Penal Code**. The particulars of the charge are that on 24th January, 2018 at Katutu Location, within Kitui County, he murdered **one James Walui (deceased)**. The accused denied committing the offence and the matter is pending for trial.

2. The Office of the Director of Public Prosecution has applied to discontinue the prosecution and applied that the accused be discharged on the grounds that there have been ongoing negotiations between the family of the deceased and the accused and his family which negotiations have yielded fruits of settlement.

3. **Mr.Okwema**, for **Director of Public Prosecution** told this court that this court should in the spirit of **Article 159 (2) (c)** promote reconciliation by agreeing with the two families to have the accused discharged. He further added that the negotiations had involved respected elders in the community one of whom was prompted to stand in court as a sign of good faith. The Director of Public Prosecution further stated that it avoided filing plea bargain agreement because of the legal requirements that could have taken more time.

4. He told this court that he had resorted to the **Provisions of Article 157 (6) of the Constitution** as a result and applied to discontinue the criminal case against the accused person. This court then directed him to a formal notice to terminate the charge against the accused and through a noticed dated 9th November, 2020 the Director of Public Prosecution has now formally entered a "*nolle prosequi*" against the accused person.

5. The accused person through his counsel have expressed no opposition to the application by the state.

6. This court has considered the application by the Director of Public Prosecution. The State had earlier indicated that it was pursuing a plea bargain with the accused but later changed tune and stated that it was terminating the proceeding in lieu of plea bargain agreement because according to the Principal Prosecution Counsel Mr.Okwema the plea bargain agreement was cumbersome and time consuming. However under **Section 137A** of the **Criminal Procedure Code**, a plea bargain agreement is not cumbersome in anyway because all it requires is participation of the accused person, the family of the deceased and both counsels representing the defence and the state. Under **Section 137A (1) (a)** a plea bargain agreement can lead to a reduction of the charge. Under **subsection (b)** of the same section a plea bargain can also lead to withdrawal of the charge. In situations where compensation is an item in the agreement as provided under **Section 175(2)** of the Criminal Procedure Code the Provisions of **Section 137 E (e)** is elaborate because provides that an accused person must append his signature on the plea bargain agreement.

7. In this matter, there were suggestions that the accused and his family has agreed to some sort of compensation but it was not clearly brought out by the parties. What the Director of Public Prosecution has stated is that he wishes to have reconciliation promoted because of the feedback he had received from the deceased family and the community elders.

8. This court has considered the *nolle prosequi* entered by the state and it is apparent that the plea is made in good faith and is free from any malice or interior motive of likelihood of charging the accused afresh.

In the premises this court allows the state through the Director of Public Prosecution to discontinue the prosecution of the accused. He is hereby discharged pursuant to the Provisions of Section 87 of the Criminal Procedure Code and shall be forthwith released unless lawfully held.

Dated, Signed and Delivered at Kitui this 11th day of November, 2020.

R. K. LIMO

JUDGE