



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

CRIMINAL CASE NO. 123 OF 2018

REPUBLIC.....PROSECUTOR

VERSUS

DOYO GALGALO.....1ST ACCUSED

GALMO GUYO GALGALO ALIAS MAKAYANGU.....2ND ACCUSED

BOKAYO DIDA BORU ALIAS WARABO.....3RD ACCUSED

RULING

Ms Mwanza for the ODPP applied for consolidation of the 2 matters and subsequent termination of the prosecution of the accused persons for purposes of carrying out further investigation.

The Letter instructing prosecuting Counsel to terminate prosecution of accused persons in the 2 matters is dated 14th January 2019 and although the Deputy Director of Public Prosecution has not pointed to any section of the law as a basis for seeking the termination of the charges, the relevant regime to the DPP's mandate is Article 157(6) which provides :-

The DPP shall exercise state powers of prosecution and may

- a) Institute and undertake criminal prosecution against any person before any court (Other than the court martial) in respect of any offence alleged to have been committed.
- b) Take over and continue any criminal proceedings commenced in any court (other than the court martial) that have been instituted or undertaken by another person or authority with the permission of the person or authority.
- c) Subject to clause (7) and (8) discontinue at any stage before judgment is delivered only. Criminal proceedings instituted by the DPP or taken over by the DPP under paragraph (b).

Article 157(8) of the constitution provides that the DPP may discontinue the prosecution with the permission of the court.

The state is therefore duty bound to give reasons for seeking to withdraw. The state has in this matter given reason that they need to conduct further investigations despite the fact that from records it is shown that on 27.12.2018 the court was dissuaded from having accused persons remanded in police custody because investigations were complete. The fear the accused persons have is that upon termination of the prosecution of the state is likely to re-arrest, detain and charge them arbitrary.

Upon consideration of the application and opposing views of defence this court is of the view that the prosecution exercising the mandate to terminate proceedings must consider the provisions of Article 157(11) of the constitution and therefore reasons for the termination must be placed properly before the court with good notice to the defence and other interested parties to respond. The letter dated 14th January 2019 giving instructions for termination of the proceedings and/or submissions by the state from the bar this morning cannot be regarded as sufficient to enable the court come up with a fair and just decision because the defence was ambushed. Secondly, the Investigating Officer did not file an affidavit giving reasons for the termination. Although the law provides that the state can terminate proceedings at any time due process has to be followed and parties must be given a fair hearing. In that regard, this application by the prosecution is deferred to enable them come properly before the court by filing a comprehensive affidavit giving reasons for such termination and serving upon the defence for a response. The prosecution should file and serve the affidavit by 21st January 2019 for inter-parties hearing on 24th January 2019. Upon service on the defence and the victim's counsel, they will be at liberty to respond if necessary. The accused persons in criminal

case no. 123 of 2018 will have their bonds extended until 24th January 2019. The accused in Criminal case No. 6 of 2019 not having been processed for plea taking will remain in custody until 24th January 2019.

Order accordingly

HON. A.ONG'INJO

JUDGE

RULING DELIVERED, DATED AND SIGNED THIS 17TH DAY OF JANUARY 2019

In the presence of:

CA: Mr Kinoti

Accused- A1, A2,A3

Ms Mwanza for state.

Mr Ndubi holding brief for victims family

Mr Kiget for A3

Mr Anyega Advocate for A1 and A2 and accused in Cr. C. No. 6 of 2019

HON. A.ONG'INJO

JUDGE

Ms Mwanza

We pray to be supplied with the copy of court's ruling.

Order

Copy of the ruling supplied to the state and defence as well as the victims advocate.

HON. A.ONG'INJO

JUDGE

Mr Anyega Advocate

I wish to make an application in Cr. C. No.6 of 2019. Today was return date for accused. We were to confirm if Mental Assessment Report and Pre-bail Reports had been filed.

Orders

Mention 24.1.2019 in both matters.

HON. A.ONG'INJO

JUDGE