

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CRIMINAL CASE NO. 58 OF 2016

REPUBLIC.....PROSECUTOR

VERSUS

ERICK MWANGI MURIUKI.....ACCUSED

RULING

Erick Mwangi Muriuki is charged with the murder of Isaac Mwaura contrary to Section 203 as read with Section 204 of the Penal Code. The offence is alleged to have been committed on 2nd July 2016 at Muthurwa Market near the mosque within Nairobi County. The accused denied committing this offence.

This matter was allocated to me on 19th March 2018. From that time forward, it became apparent to the court that the prosecution was having difficulties in securing attendance witnesses. On 23rd October 2018 Margaret Mwihaki (PW1) testified. Her role in this case was to identify the body of her brother Isaac Mwaura. She was the only witness to have testified. On 18th February 2019, Mrs. Kinoti, Learned Prosecution Counsel, informed the court that the DPP intended to enter a ***Nolle Prosequi*** in the matter. She presented a document dated 13th February 2019 to that effect to the court. The document is signed by Deputy DPP Mr. Jacob Ondari on behalf of the Director of Public Prosecutions. She asked the court to allow the DPP to terminate criminal proceedings against the accused in this murder case. The application was not opposed by Mrs. Omungala, Learned counsel for the accused.

The authority to terminate criminal proceedings is exercised by the Director of Public Prosecution vide Article 157 (6) of the Constitution (2010). This authority, however, cannot be exercised without permission from the court as provided under Article 157 (8) of the Constitution. Another relevant section of the law is Section 82(1) Criminal Procedure Code which provides as follows:

In any criminal case and at any stage thereof before verdict or judgment, 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 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 recognizances 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.

The reasons for the termination of criminal proceedings, though not expounded at the time of making this application, it is apparent to this court that the reasons behind the move taken by the DPP have been captured in the court records. The prosecution has had a hard time securing witnesses to attend court and testify and the court record is clear as intimated by the Prosecution Counsel that the witnesses, who are said to be street families, cannot be traced.

I have considered the matter and I find no reason to decline the application. Consequently, I hereby permit the DPP to terminate criminal proceedings against the accused Erick Mwangi Muriuki. For the avoidance of doubt, the murder charge contrary to section 203 as read with section 204 of the Penal Code is hereby terminated. I consequently discharge Erick Mwangi Muriuki forthwith. He is free to enjoy his freedom unless for any other lawful cause he is held in custody. Orders shall issue accordingly.

Delivered, dated and signed this 19th day of February 2019.

S. M. Mutuku

Judge