

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

CRIMINAL CASE NO. 6 OF 2018

REPUBLIC

VERSUS

MAGDALINE WANJIKU KURIA.....ACCUSED

RULING

1. The accused was charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code; she is accused of having murdered Stanley M’Nyungii on the 31st March, 2018 at Rurii Village in Kieni West Sub-County within Nyeri County;
2. On the 16th April, 2018 a plea was taken and the accused entered a plea of Not Guilty; the accused made a successful application for bail which was granted to her on the 19/04/2019; and the matter was scheduled to commence hearing on the 19/07/2018 but was adjourned on several other occasions;
3. Vide a letter dated the 21st March, 2019 the Director of Public Prosecutions (DPP) invoked the powers delegated to him under the provisions of Articles 157(6)(c) and 157(9) of the Constitution and entered a ‘**Nolle Prosequi**’ against the accused; the reasons given were that upon reviewing the evidence a decision was made not to continue with the case; the defence responded by stating that it did not object to the ‘**Nolle Prosequi**’;
4. The only issue for determination is whether the power to enter the ‘**Nolle Prosequi**’ was being exercised in accordance with the provisions of the Constitution;
5. 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;
6. This court is enjoined to impeach the use of the exercise of such power where it is exercised in bad faith, oppressively, capriciously or where it is against public interest;
7. In this instance the defence counsel did not allude to any rights of the accused to fair trial and fair administrative action having been breached by the discontinuance; nor was there any submission made of oppression or abuse of legal process, misuse of power or that the action being taken was ‘**mala fides**’ or an afterthought due to unavailability of evidence or witnesses;
8. It is noted that the matter has only been in court for a period amounting to less than a year and that a plea had been taken and the hearing had not even taken off and thus no judgment is in sight; also the defence counsel has placed no material before this court to demonstrate that the DPP in entering the ‘**Nolle Prosequi**’ is exercising his powers in an unconstitutional or improper manner;
9. For those reasons this court is satisfied that the DPP’s discretion is not being exercised in an unconstitutional or improper manner; and finds that the application dated the 21/03/2019 by the DPP to enter a ‘**Nolle Prosequi**’ is valid and effective and terminates the prosecution proceedings against the accused person, herein;
10. The accused is hereby discharged in respect of the Charge herein and shall be set at liberty forthwith unless otherwise lawfully held;
11. The surety is hereby discharged and the security tendered to court be released to the surety.

Orders Accordingly.

Dated, Signed and Delivered at Nyeri this 4th day of April, 2019.

HON.A.MSHILA

JUDGE