



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT GARISSA

CRIMINAL CASE NO. 2 OF 2019

REPUBLIC.....PROSECUTION

VERSUS

YUSSUF NOOR YERROW.....ACCUSED

RULING

1. The accused was charged with offence of murder contrary to section 203 as read with section 204 of the Penal Code (Cap. 63 Laws of Kenya). Particulars being that on 20/1/2019 in Bulla Iftin area in Garissa Sub-County, Garissa County murdered Hussein Ali Maliyu.
2. He pleaded not guilty on 19/2/2019 and matter was fixed for hearing on 7/5/2019.
3. The matter never proceeded as the Judge was bereaved and thus on compassionate leave.
4. The matter came again to court on 13/6/2019 when the defence indicated that parties were pursuing a diversion mode of resolving the dispute.
5. The matter came again on 25/9/2019. The parties indicated that there was progress in the process and thus sought more time and thus was fixed for mention on 4/11/2019.
6. On 4/11/2019 the matter was given another date the 18/11/2019. On 18/11/2019 the parties indicated that the communities and family members from both sides had resolved matter via ADR commonly referred to as Maslaha.
7. This was confirmed by the affidavits sworn by the wife of the deceased person sworn on 7/11/2019 by Zaitun Salim Abale.
8. Further there is an affidavit by Mwanamisi Dara Guyo mother of the deceased via her affidavit sworn on 7/11/2019. She confirms the same element of the ADR. Finally, the other affidavit on record is one of Ali Maliyu Babuya father of the deceased. He confirms what the deceased's wife and his own wife have deponed to.
9. The minutes of 6/11/2019 of the elders of the deceased's family side and accused family side have also confirmed that all the families concerned and the communities' members were agreed on settlement for good of peace and harmony of the both sides and wider interest of the society.
10. In the circumstances of this case, I find the settlement agreement in the minutes aforesaid is not inconsistent with the spirit and purposes of **Article 159(2) and (3) of the Constitution of Kenya**. I am not also aware of any written or international convention that prohibits the amicable settlement proposed. Am also guided by the following authorities **Garissa HCCR. No. 2/2016 Republic vs. Musili Ivia & Another** which relied on **NRB HCCR. 86/2011 Republic vs. Mohammed Abdan** as well. Other matters **Garissa HCCR. 36/2012 Republic vs Omar**, and **Republic vs Margaret Mwende Kweta**
11. The victim is already dead and close relatives agree to settlement. I have not been told that there is any objection from the community or public at large. I will therefore accord the both sides settlement consideration in this matter under Article 157 (6) Constitution of Kenya.
12. The DPP requested to discontinue criminal proceedings subject to the permission of the court. He has asked for such discontinuance of the criminal proceedings on above settlement. He said all parties and witnesses are part of the scheme of settlement and all relatives are part and parcel of the reconciliation.
13. The DPP has also stated that due to the aforesaid reconciliation the witnesses are not willing to testify. The court takes judicial notice that to find witnesses who have been part of reconciliation to come to court would be daunting task of bringing them to court to testify against accused in my considered view.

14. In my considered view this court is obliged to promote reconciliation as requested and thus allow the request of the DPP and order:

i. The proceedings herein against accused for Murder be and are hereby discontinued.

ii. No witness has testified, the Accused person is hereby discharged and released forthwith unless otherwise lawfully held.

DATED, DELIVERED AND SIGNED AT GARISSA THIS 19TH DAY OF NOVEMBER, 2019.

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C. KARIUKI

JUDGE