

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII

CRIMINAL APPEAL NO. 60 OF 2015

DOMINIC BOSIRE OTACHIAPPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Appeal from the original conviction and sentence of Hon. J.M Njoroge – CM (Ag.) dated 3rd July, 2015 at the Chief Magistrate’s Court at Kisii in Criminal Case No. 338 of 2015)

JUDGMENT

1. This is an appeal against the decision of the trial magistrate granting leave to the prosecution to withdraw a charge of manslaughter against the appellant under section 87(a) of the Criminal Procedure Code (chapter 75 of the Criminal Procedure Code). The reason given was that the post mortem results showed that the deceased died from natural causes.
2. In this appeal the appellant states that the discretion was improperly exercised in light of the fact that there was no evidence. Counsel’s view is that the appellant ought to have been acquitted.
3. Article 157(6) gives the Office of the Director of Public Prosecutions the power to commence criminal proceedings and to withdraw them at any stage. Under Article 157(6) if the discontinuance takes place after the close of the prosecution case, the accused shall be acquitted. This provision is restated in Section 87(a) and (b) of the Criminal Procedure Code.
4. The question then is whether the trial magistrate erred in the exercise of discretion. I think not. The trial magistrate complied with the law and there is nothing to show that there was an abuse of the court process. I cannot intervene here particularly as the record before me does not disclose all the circumstances of the case. Consequently, the appeal is dismissed.

Dated and delivered at Kisii this 12th day of July 2018.

D.S MAJANJA

JUDGE

Mr. Otieno, Prosecution Counsel, instructed by Office of Director of Prosecutions.

Mr. Bosire Gichana for the Appellant.