

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT GARISSA

CRIMINAL CASE NO. 2 OF 2018

REPUBLIC.....PROSECUTOR

VERSUS

ISSACK TILO TONGO.....ACCUSED

RULING

1. The accused herein stands charged with the offence of murder contrary to section 203 as read with section 204 of the Penal Code. The particulars of the offence are that on 2nd March 2018 at Madogo Location in Tana River North Sub-County within Tana River Country murdered Abubakar Tilo Tongo.

2. On being brought to court, he pleaded not guilty. However, before hearing of the case commenced, Mr. Onono for the accused informed the court that the case involved close family members and that the incident actually involved three brothers. He thus said that the family was soul searching with respect to the further progress of the matter and this court gave both the prosecution and the defence time to go into the depth of the matter and report back.

3. On 3rd of October 2018, Mr. Okemwa the Principal Prosecuting Counsel informed the court that the mother of the deceased who was also the mother of the accused by the name Fatuma Tilo Tongo had indicated that she had already lost one son and did not intend to lose another through the criminal trial. She said that the deceased was the bread winner of a large family and that the family had sat down and reconciled. He stated that he had also received a letter from the District Criminal Investigation Department signed by Micheal Muge stating that they did not have any objections to reconciliation.

4. The Prosecuting Counsel thus urged in the spirit of Article 159 (2) (c) of the Constitution, that this court should promote peace through alternative justice system. He stated that it would be futile for this court to proceed with the case as key witnesses would not be available to tender evidence, and submitted a written agreement of the family as well as the letter from the police to the court and requested for permission for the discontinuation of the criminal proceedings herein under section 25 of the Office of Director of Public Prosecutions Act 2012.

5. On his part, Mr. Onono for the defence stated that all family members went to his office following family discussions and handed to him a consent letter as well as an affidavit. He agreed with the request of the Prosecution Counsel for discontinuance of the case, and said that in the family only the accused had a regular income and would be able to take care of his own children and the children of his late brother if released.

6. I have considered the matter and the submissions both of the prosecution and the defence. I have seen the affidavit of Fatuma Tilo Tongo and I have perused the same. I have also perused the letter of authority and consent signed by members of the family on 6th September, 2018. I have also perused the letter from the Directorate of Criminal Investigations, Madogo received by the DPP's Office on 28th September, 2018.

7. As it is unlikely that this court will get witnesses to testify in this matter which is basically a criminal case within a family, and the family have reconciled, I find that the most appropriate course of action for this court is to allow the discontinuance of the criminal proceedings herein, which does not disentitle the Director of Public Prosecutions from instituting criminal proceedings against the accused person in the future on the same facts.

8. I thus allow the request of the Director of Public Prosecutions and order that the criminal proceedings herein be and are hereby discontinued in accordance with Article 157 of the Constitution of Kenya 2010 and section 25 of the Office of the Director of Public Prosecutions Act. As no witness has so far testified, the accused herein is discharged.

Dated and delivered at Garissa this 18th day of October, 2018.

.....

George Dulu

JUDGE