

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT GARISSA

CRIMINAL CASE NO. 2 OF 2017

REPUBLIC.....PROSECUTOR

VERSUS

PANTHER AJAK PAL.....ACCUSED

RULING

1. The accused has been brought to this court on a murder charge contrary to section 203 as read with section 204 of the Penal Code.
2. He was first brought to court on 12th April, 2017 before the Deputy Registrar, then on the same date to the High Court, but plea was not taken until 16th May 2017 as his mental status report had not been received on 12/4/2017.
3. Hearing of the case was fixed for 11th July 2017 but was not heard due to the absence of Mr. Nyasani the defence counsel. It was fixed for hearing on 7/2/2018 but did not proceed, again on 2/5/2018 and 13/6/2018, until a new advocate Mr. Onono had come on record.
4. When the case came up for hearing on 18/9/2018, Mr. Okemwa for the Director of Public Prosecutions referred to an affidavit dated 24th May 2018 sworn by Elizabeth Adiu Thuch the mother of both the deceased and the accused as well as a letter dated 18th September 2018 from the investigating officer PC Shadrack Kimanthi of Dadaab Police Station, in which it was stated that the mother of the deceased, who was also the mother of the accused and a key prosecution witness, was not willing to testify against her son, as she had already lost the other son.
5. The Prosecuting counsel further submitted that in view of the fact that the biological mother of the accused who was also biological mother of the deceased did not intend to testify in court, and the fact that the investigating officer had stated in his letter that his other two key witnesses had left the Refugee Camp for their home country, the prosecution was constrained to apply under section 25 of the ODPP Act that the criminal proceedings herein be discontinued in line with provisions of Article 159 of the Constitution of Kenya 2010 as such action would promote harmony in the family and the larger community.
6. Mr. Onono for the accused person in response supported the proposal of the Prosecuting Counsel, and stated that the witness, who was mother of both the accused and the deceased, had good intentions in declining to testify as such would serve the best interests of her offspring.
7. Ms. Ndindi for the family of the deceased in response emphasized the importance of peace building initiatives in communities, especially refugee communities.
8. Having considered the request of the Principal Prosecuting Counsel for the DPP, and the submissions of Mr. Onono and Ms. Ndindi, as well as having perused and considered the affidavit of the mother of the accused who is also the mother of the deceased, and the letter from the investigating officer herein, I am of the view that allowing the request of the DPP to discontinue the criminal proceedings herein, is the best way to go. It is unlikely that this case will progress further if I decide to hear it, as crucial witnesses will not be available to testify in court. Secondly, because of the stand taken by the mother of the deceased, who is a key witness, in my view, such discontinuance will certainly promote peace, harmony and sharing of responsibilities in the family as the accused person will be able to take care of his own children who are now cared for by his mother.
9. Consequently, I allow the request of the prosecution and order that the criminal proceedings herein be and are hereby discontinued under Article 157 of the Constitution and section 25 of the Office of Director of Public Prosecutions Act. As no witness has testified yet, the accused person is hereby discharged.

Dated and delivered at Garissa this 3rd day of October, 2018.

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George Dulu

JUDGE