

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MURANG'A

CRIMINAL CASE NO 47 OF 2012

REPUBLIC.....PROSECUTOR

VERSUS

JOSEPH WAINAINA KURIA..... ACCUSED

RULING

1. The Accused herein is charged with *murder* contrary to **section 203 as read with section 204** of the **Penal Code**. It is alleged in the information dated 28/12/2012 that on 16/12/2012 at Kirere Trading Centre in Kigumo District within Murang'a County he murdered one **Peter Kamau Irungu**.

2. On 04/02/2013 the Accused pleaded not guilty to the offence. His trial commenced on 03/02/2016 after many false starts occasioned by various factors appearing on the record. Only one witness for the prosecution testified as no others were available. On that date the court granted the last adjournment upon the ground of non-attendance of prosecution witnesses.

3. When the case came up for further hearing on 13/06/2016 no witnesses for the prosecution attended court. The court declined to grant any further adjournment and directed that the trial do proceed. The prosecution then sought an opportunity to terminate the proceedings by entry of a *nolle prosequi*. That opportunity was accorded to the prosecution. The following day, 14.06.2016, the prosecution sought leave of the court to tender a written *nolle prosequi*. Learned counsel for the Accused did not oppose.

4. Murder cases, by their nature, are highly emotive, no doubt because of the fact that a human life has been lost. Full and proper justice is done to both the accused and the victim (which turn necessarily includes his or her family and relatives) only when there is a full trial and a judgment is rendered either convicting or acquitting the accused. Such full trial must be accomplished within a reasonable time as demanded by the **Constitution of Kenya, 2010**. There has not been a full trial within a reasonable time in this case.

5. In these circumstances I consider that it is in the interest of justice that the **Director of Public Prosecutions** be permitted to retain his constitutional control over these proceedings, though in the instant case I note that learned prosecution counsel stated that it is not intended to charge the accused person again with murder.

6. I will therefore permit the Director of Public Prosecutions to terminate these proceedings by *nolle prosequi*. It is so ordered.

DATED AND SIGNED AT MURANG'A THIS 14TH DAY OF JULY 2016

H P G WAWERU

JUDGE

DELIVERED AT MURANG'A THIS 15TH DAY OF JULY 2016