



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT VOI**  
**CRIMINAL CASE NO 5 OF 2015**

**REPUBLIC ..... PROSECUTOR**

**VERSUS**

**MWANYIKA MBELE alias HAMISI.....1<sup>ST</sup> ACCUSED**

**SADI MWAKE.....2<sup>ND</sup> ACCUSED**

**AMINA RUWA.....3<sup>RD</sup> ACCUSED**

**STEPHEN MWANYALA MBELE.....4<sup>TH</sup> ACCUSED**

**RULING**

**INTRODUCTION**

1. The Director of Public Prosecution (DPP) filed a Notice to Discontinue Prosecution dated 24<sup>th</sup> November 2015 on 1<sup>st</sup> December 2015. The same was in respect of Amina Phali Ruwa and Stephen Mwanjala Mbele, the 3<sup>rd</sup> and 4<sup>th</sup> Accused persons respectively. Mr Sirima, counsel for the State, submitted that the DPP is empowered by Article 157(8) of the Constitution of Kenya, 2010 to discontinue prosecution but not without leave of the court.
2. He also referred the court to Article 157(6)(c) of the Constitution of Kenya that provides that the discontinuance of the prosecution can be done at any stage before judgment is delivered.
3. On the other hand, Mr Mwanyumba, counsel for the Accused persons indicated that ordinarily, he would not have objected to the discontinuance of the prosecution against the 3<sup>rd</sup> and 4<sup>th</sup> Accused persons but that he was apprehensive that they could be turned into Prosecution witnesses.
4. He proposed that the DPP ought to proceed by way of an Inquest to establish who caused the death of Julius Mwalimu Mbele on 22<sup>nd</sup> April 2015. Mr Mwanyumba suggested that there had been coercion and/or duress on the part of the 3<sup>rd</sup> and 4<sup>th</sup> Accused persons to testify against the 1<sup>st</sup> and 2<sup>nd</sup> Accused persons hence the entry of the *nolle*, a suggestion that was vehemently denied by Mr Sirima.

**LEGAL ANALYSIS**

5. I have carefully considered the oral submissions by both Mr Sirima and Mr Mwanyumba and had regard to the provisions of the Constitution of Kenya and the Criminal Procedure Code and note that an apprehension by a co-accused persons that the persons in whose regard prosecution is to be terminated cannot be a sufficient reason for the court not to allow a Notice of Discontinuance of the Prosecution.

6. The case belongs to the State. It must be given latitude to conduct its case. Indeed, a court cannot refuse to enter a *nolle prosequi* to protect accused persons from evidence that could be adduced against them by persons who they had been charged with in a case.
7. In addition, the option of the DPP seeking to establish the cause and circumstances leading to the death of the deceased herein through an Inquest is not one that would dissuade this court from granting leave to the DPP to discontinue prosecution herein.
8. The reasons advanced by Mr Mwanyumba were therefore not valid at all. In any event, under Section 82(1) of the Criminal Procedure Code Cap 75 (Laws of Kenya), all the DPP is required to do is to inform the court that it intends to discontinue the prosecution and the court shall at once discharge the accused person.
9. The DPP has sought leave as mandated by the Constitution of Kenya to discontinue the prosecution and informed the court of its intention. The court sees no reason that shows that this Notice of Discontinuance of Prosecution has been brought with the intention to defeat the interests of justice.

### **DISPOSITION**

10. In the circumstances foregoing, I hereby reject the submissions by Mr Mwanyumba but instead admit the Notice to Discontinue Prosecution that was dated 24<sup>th</sup> November 2015 and filed on 1<sup>st</sup> December 2015. The 3<sup>rd</sup> and 4<sup>th</sup> Accused persons, namely, Amina Phali Ruwa and Stephen Mwanjala Mbele are hereby discharged pursuant to the provisions of Section 82(1) of the Criminal Procedure Code and as has been provided for in Article 157 (6) (c) and Article 157(8) of the Constitution of Kenya.

11. It is so ordered.

**DATED** and **DELIVERED** at **NAIROBI** this 1<sup>st</sup> day of December 2015

**J. KAMAU**

**JUDGE**

In the presence of:-

Sirima for ..... State

Mwanyumba for ..... 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Accused Persons

Simon Tsehlo– Court Clerk