



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT ELDORET

CRIMINAL CASE NO. 34 OF 2009

REPUBLIC:.....PROSECUTOR

VERSUS

STEPHEN CHEBET CHELIMO:..... ACCUSED

RULING

The Director Public prosecutions has through the Learned State Counsel applied to withdraw the charge of murder against the accused. Under Article 157 (6)(c), the Director of Public Prosecution had power to discontinue proceedings before judgment is rendered. Under Article 157(8), the proceedings can not be discontinued without leave of this court.

The plea in this case was taken on 18th June, 2009. The accused pleaded not guilty. The persecution said it had seven witnesses. The case was adjourned for various reasons on 26th November, 2009, 24th July, 2011, the witnesses were unavailable. The witnesses were not available either on 19th December, 2011, 7th May, 2012 and 26th June, 2012. On that date, the Court granted the prosecution a last adjournment. On 16th October, 2012, the state was again not ready and was granted a “very last adjournment.” On 17th December, 2012, only the Doctor who carried out the postmortem was present. Another adjournment was granted. On 20th March, 2013 yet another adjournment was granted for want of witnesses. On 29th July, 2013 and 6th November, 2013, the matter was adjourned because the learned counsel for the accused was unavailable. On all the other adjournments, the state cause the case to be removed from the cause list for want of witnesses or material witnesses.

On 10th July, 2014, the matter was fixed for hearing. The learned state counsel had no witnesses. She applied, like I stated to withdraw the charge. For abundance of caution I called the investigating officer PC George Ouma to the stand who confirmed that the key witness had remarried and can not be traced and that the local chief has been completely unable to get the other witnesses. In the meantime, the accused is still in prison custody.

Considering the history of the case that I set out at length, I am persuaded that this is a proper case for withdrawal of the charge Under Article 157 (6) (a) of the Constitution. The accused is facing a serious charge of murder but he is still entitled to constitutional safeguards of being presumed innocent. The trial has remained pending since 2009 and the prosecution was unable to proceed on all the over ten occasions that I particularized earlier for want of witnesses. It is evident from the learned State Counsel Ms. Ruto and the investigating officer PC George Ouma that the witnesses may never be procured. I can not say the accused has anything to do with it.

Granted all of those reasons I allow the Director of Public Prosecutions to withdraw the charge Under

Article 157(6) (a) of the constitution. As the accused had not been placed on his defence, he is hereby discharged. The discharge shall not be a bar to subsequent proceedings on account of the same facts. The accused may accordingly be set free forthwith unless lawfully otherwise held.

It is so ordered

Dated, Signed and Delivered at Eldoret this 10th day of July, 2014

G.K. KIMONDO

JUDGE

Ruling read at 2:30p.m. In Open Court in the presence of:-

Mr. Stephen Chelimo - Accused

Ms. Mwaniki - State Counsel

Mr. Weyama - Court Clerk

G.K. KIMONDO

JUDGE