



REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Criminal Case 86 of 2011

REPUBLIC.....PROSECUTOR

VERSUS

MOHAMED ABDOW MOHAMED.....ACCUSED

RULING

Mohamed Abdow Mohamed is charged with the murder of **Osman Ali Abdi**. According to the information dated 8th November 2011 under the signature of the Deputy Prosecutions Counsel he, jointly with others not before court committed the offence on the 19th day of October 2011 at Eastleigh, 10th Street in the Starehe District within Nairobi County.

The accused was arraigned in court on 16th November 2011 and he pleaded not guilty to the charge. The trial was set to commence on the 26th March 2012. On the date of hearing however, Mr. Kimanathi for the State informed the court that Mr. Bonyo, Counsel on record holding watching brief for the deceased's family had written to the Director of Public Prosecutions requesting that the charge be withdrawn on account of a settlement reached between the families of the accused and the deceased respectively. The letter in question read in part:-

“.....The two families have sat and some form of compensation has taken place wherein camels, goats and other traditional ornaments were paid to the aggrieved family. Actually one of the rituals that have been performed is said to have paid for blood of the deceased to his family as provided for under the Islamic Law and customs. These two families have performed the said rituals, the family of the deceased is satisfied that the offence committed has been fully compensated to them under the Islamic Laws and Customs applicable in such matters and in the foregoing circumstances, they do not wish to pursue the matter any further be it in court or any other forum.....”

Mr. Kimanathi then proceeded on the instructions of the Director of Public Prosecutions to make an oral application in court to have the matter marked as settled. He cited **Article 159 (1)** of the Constitution which allows the Courts and Tribunals to be guided by alternative dispute resolution including reconciliation, mediation, arbitration and traditional dispute resolution mechanisms. He urged the court to consider the case as *'sui generis'* as the parties had submitted themselves to traditional and Islamic laws which provide an avenue for reconciliation. He stressed that each of the parties was satisfied and felt adequately compensated.

Finally, Counsel submitted that since the time of arrest of the accused, the prosecution had had great difficulty in securing the attendance of witnesses as the said witnesses were not only no longer interested in the prosecution but were actually eager to see the matter marked settled. He drew the court's attention to the affidavit of Abdow Alio Ibrahim, the deceased's father which in part reads:-

“.....its worth noting that it goes against our tradition to pursue the matter any further and/or testify against the accused person once we have received full compensation in the matter of which we already have..... its our instruction that the matter and/or court case be withdrawn as our family wishes to put a stop to the matter.”

I have considered the application. Under **Article 157** of the Constitution the Director of Public Prosecution is mandated to exercise state powers of prosecution and in that exercise may discontinue at any stage criminal proceedings against any person. In the unique circumstances of the present application, I am satisfied that the ends of justice will be met by allowing rather than disallowing the application. Consequently, I discharge the accused.

He is set at liberty forthwith unless otherwise lawfully held.

Ruling delivered, dated and signed at Nairobi this 2nd day of May, 2013

**R. LAGAT - KORIR
JUDGE**

In the presence of:

.....Court clerk
.....: Accused
.....: For the accused
.....: For the State