



**Republic v Muturi & 2 others (Criminal Case E2063 of 2023)
[2024] KEMC 138 (KLR) (4 July 2024) (Ruling)**

Neutral citation: [2024] KEMC 138 (KLR)

**REPUBLIC OF KENYA
IN THE NAKURU LAW COURTS
CRIMINAL CASE E2063 OF 2023
PA NDEGE, SPM
JULY 4, 2024**

BETWEEN

REPUBLIC PROSECUTION

AND

STEPHEN MUTURI 1ST ACCUSED

JOHN MBOGO MWANGI 2ND ACCUSED

JOHN THOGO 3RD ACCUSED

RULING

1. The Accused persons herein, Stephen Muturi, John Mbogo Mwangi, And John Thogo (hereinafter referred to as the 1st, 2nd and 3rd Accused persons, respectively), were on 17/08/2023, charged with the offence of Stealing c/s 268 as read with 275 of the Penal Code, and in the alternative, Handling Stolen Goods c/s 322 of the same Code. They all denied the charge and hearing commenced on 13/03/2024 with only 1 witness so far testifying for the prosecutions.
2. There was to be a further hearing on 12/06/2024. On that day, Mr. Matoke appeared for the first time for the 3rd accused. The prosecution however presented a diversion agreement dated 12/06/2024, between it and the 3rd Accused, in which the prosecution agreed to withdraw from prosecuting the 3rd accused under section 87(a) of the Criminal Procedure Code, on condition that the 3rd accused undertakes to refrain from violation of any law, immediately to inform the area chief and the probation officer of any change of his residence, cooperate in providing information requested through the diversion program and most notably, be turned into prosecution witness herein amongst other conditions. The 3rd accused, through his counsel, agreed to the condition. This court however reserved its ruling on whether to accept the diversion agreement and the subsequent application by the prosecutions to withdraw under section 87(a) of the Criminal Procedure Code.



3. That diversion as an alternative to criminal prosecution is widely accepted as one of the means of settling criminal dispute is no longer in doubt. It serves as a means of resolving criminal case by removing the matter from the court system, but only in deserving cases. It enables prosecutors to divert cases from the court process and allows matters to be settled out of court on merit and through agreed structure.
4. Furthermore, Article 159 (2)(c) of the Constitution, requires courts and tribunals to promote alternative forms of dispute resolution including reconciliation, mediation, arbitration and traditional dispute resolution mechanisms.
5. The power of the Director of Public Prosecutions (DPP) to institute, terminate and generally steer the prosecutions has been provided for in Article 157(6) of the Constitution. Article 157(6)(c) of the constitution provides that te Director of Public Prosecutions shall exercise State powers of prosecution and may--
 - a. institute and undertake criminal proceedings against any person before any court (other than a court martial) in respect of any offence alleged to have been committed;
 - b. take over and continue any criminal proceedings commenced in any court (other than a court martial) that have been instituted or undertaken by another person or authority, with the permission of the person or authority; and
 - c. subject to clause (7) and (8), discontinue at any stage before judgment is delivered any criminal proceedings instituted by the Director of Public Prosecutions or taken over by the Director of Public Prosecutions under paragraph (b).
6. The prosecutions has intimated that the 3rd accused shall be turned into their witness. In light of the above constitutional provisions, I may not want to interfere unduly with the prosecutions' mandate and I do therefore hereby adopt the diversion agreement herein and do consequently allow the prosecutions to withdraw from the charge against the 3rd Accused person herein pursuant to the provisions of section 87(a) of the Criminal Procedure Code. The 3rd accused person and his surety are hereby discharged and any security deposited on his behalf be returned to the depositor.

DATED, SIGNED AND DELIVERED AT NAKURU IN OEN COURT THIS _04TH, DAY OF JULY 2024

ALOYCE-PETER-NDEGE

SENIOR PRINCIPAL MAGISTRATE

In the presence of;

Court interpreter: Janet

Prosecutions Counsel: Chinga

3rd Accused Counsel: Matoke

1st Accused: Present

2nd Accused: Present

3rd Accused: Present

Chinga: We can take a date for further hearing

Matoke: It is okay



CT: Hearing on 11/12/24 and mention for A1/ A2 within 14 days

