



REPUBLIC OF KENYA



KENYA LAW
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**Republic v Mutai (Criminal Case E1523 of 2023)
[2023] KEMC 304 (KLR) (27 July 2023) (Ruling)**

Neutral citation: [2023] KEMC 304 (KLR)

**REPUBLIC OF KENYA
IN THE NAKURU LAW COURTS
CRIMINAL CASE E1523 OF 2023
PA NDEGE, SPM
JULY 27, 2023**

BETWEEN

REPUBLIC PROSECUTION

AND

HASSAN KIPRUTO MUTAI ACCUSED

RULING

1. Esther Chelangat Kosgei, the complainant, appeared in court on the 5th of June 2023 and in her application on oath prayed that she has wilfully forgiven the accused person. She averred that Hassan Kipruto Mutai, the accused person herein, s wanted to kill her, but she wanted the court to forgive him. That she would not lodge the complaint again.
2. The issue herein is however whether any criminal case, especially the pone involving serious charges herein can be terminated through a simple act of forgiveness as applied herein. Under Section 204 of the *Criminal Procedure Code*, a complainant may withdraw the complaint before the court makes a final order in the matter and the court has discretion as to whether to allow or reject the withdrawal, when satisfied of existence or otherwise of sufficient grounds for permitting such a withdrawal.
3. However, forgiveness or reconciliation is limited by Section 176 of the *Civil Procedure Code*, which provides that courts can promote reconciliation and encourage and facilitate the settlement in an amicable way of proceedings for common assault or for any other offence of a personal or private nature not amounting to a felony and not aggravated degree.
4. The accused person, Hassan Kipruto Mutai, is alleged to have wilfully and unlawfully uttered the words, “*NITAKUUA WEWE LEO KWA SABABU HAUJANIJENGEA NYUMBA*” threatening to kill Esther Chelangat Kosgei, contrary to section 223(1) of the *Penal Code*.



5. Having found that reconciliation and/or forgiveness is limited under section 176 of the *Criminal Procedure Code* to misdemeanours and not felonies, the remaining issue herein is whether threatening to kill is a misdemeanour or not an aggravated offence?
6. Section 223(1) of the *Penal Code* provides that any person who without lawful excuse, utters or directly/indirectly causes any person to receive a threat, whether in writing or not, to kill any person is guilty of a felony and is liable to imprisonment for 10years. This makes it a felony and killing or threat to kill cannot be said to be a misdemeanour or a simple offence.
7. Even though reconciliation and alternative Dispute Resolution should be promoted as per article 159(2) (c) of *the constitution*, the accused person, Hassan Kipruto Mutai is alleged to have committed a felony by threatening to kill Esther Chelangat Kosgei. This disqualifies the chances of a reconciliation as per section 176 of the *Criminal Procedure Code*. I thus reject the application by the complainant to forgive and do hereby direct that unless the prosecution deems it fit to withdraw under section 87(a) of the *CPC*, this matter does proceed for herein.

DATED, SIGNED AND DELIVERED AT NAKURU IN OPEN COURT THIS 27TH DAY OF JULY 2023

ALOYCE PETER NDEGE

SENIOR PRINCIPAL MAGISTRATE

In the presence of;

Court interpreter: Janet

Present for Prosecutions: Chinga

Accused person: Present

Complainant/ victim: Present

