



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

CRIMINAL CASE NO.E002 OF 2025

**REPUBLIC-----
PROSECUTOR**

-VERSUS-

**JOHN KIMANI MUTURI-----
RESPONDENT**

RULING

1. The Accused faces the capital charge of murder contrary to **Section 203** as read with **Section 204** of the **Penal Code**. The particulars of the offence state that on 25th October, 2024 at Chagra Canteen located at Githioro Police Station, Nakuru North Sub-County, he murdered **Morris Gachanja Gathiru**. The Accused pleaded not guilty to the charge.

2. After completion of Pre-trial Procedure, the case was first set down for hearing on 13th May, 2025 but evidence was not taken on that date because it transpired that the defence Counsel was only supplied with some prosecution documents that day. Hearing also failed to proceed on a subsequent date of 7th October, 2025 for the reason that prosecution witnesses did not turn up.
3. On the next hearing date of 25th November 2025, the prosecution Counsel (**Mr. Wakasyaka**) presented *Nolle Prosequi* dated 18th November, 2025 signed by a Senior Assistant Director of Public Prosecutions (**Tom Imbali**) who is the Regional Head, South and North Rift Region, on behalf of the Director of Public Prosecutions. Counsel Imbali states in the *Nolle Prosequi* instrument;

“IN EXERCISE of powers conferred on the Director of Public Prosecution by Article 157 (6) of the Constitution of Kenya and under section 83 of the Criminal Procedure Code, I HEREBY enter NOLLE PROSEQUI and inform this Honorable Court that the Republic intends that the proceedings against; JOHN KIMANI MUTURI who is charged with the offence of murder

contrary to Section 203 as read with Section 204 of the Penal Code SHALL NOT CONTINUE.”

4. The Defence Counsel (**Mr. Ndichu**) does not oppose the Application.

5. **Article 157 (6) of the Constitution** is in the following terms;

(6) The 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).

(7) If the discontinuance of any proceedings under clause (6) (c) takes place after the close of the prosecution's case, the defendant shall be acquitted.

(8) The Director of Public Prosecutions may not discontinue a prosecution without the permission of the court.

6. **Section 82** of the **Criminal Procedure Code** under the Application is also brought provides for;

“Power of Director of Public Prosecutions to enter *nolle prosequi*

(1) In any criminal case and at any stage thereof before verdict or judgment, as the case may be, the Director of Public Prosecutions may enter a *nolle prosequi*, either by stating in court or by informing the court in writing that the Republic intends that the proceedings shall not continue, and thereupon the accused shall be at once discharged in respect of the charge for which the *nolle prosequi* is entered, and if he has been committed to prison shall be released, or if on bail his recognizances shall be discharged; but discharge of an accused person shall not operate as a bar to subsequent proceedings against him on account of the same facts.

(2) If the accused is not before the court when a *nolle prosequi* is entered, the registrar or clerk of the court

shall forthwith cause notice in writing of the entry of the *nolle prosequi* to be given to the keeper of the prison in which the accused may be detained.”

7. **Article 157 (11)** of the Constitution enacts:

“that in n exercising the powers conferred by the Article, the Director of Public Prosecution shall have regard to the public interest, the interests of administration of justice and the need to prevent and avoid abuse of the legal process.”

8. **Section 23** of the **Victim’s Protection Act** requires that the opinion of the victim of the offence ought to be sought before the Director of Public Prosecutor (DPP) exercises his discretion to terminate a case. The law does not however state that the victim’s views must be adhered to.

9. In **Republic Vs Nyalandi, Criminal Revision 524 of 2020 (2023) KEHC 1063, KLR (Criminal) (19 January 2023) (Ruling)** it was opined that to determine if the threshold set in **Article 157 (11)** of the Constitution has been complied with, the court shall consider the following *inter alia*;

- a) Whether the Application is brought in good faith.
- b) Whether the society has a stake in the matter in issue.

- c) Whether the Accused will suffer prejudice if the Application is allowed or denied.
- d) Whether reasons in support of the Application are reasonable, sufficient and for adequate.
- e) Whether there has been inordinate delay in making the Application for withdrawal of the case
- f) The Sentiments of the Respondent to the Application.

10. As held in **Republic -Vs- Sarah Wairimu (2019) KEHC 11946 (KLR)**; the court shall intervene in an Application to enter *Nolle Prosequi* where it is shown that the DPP abused discretion, or exercised it for improper purposes or where there is failure to exercise statutory discretion. This holding is approved in **Seenoi Ene Parsimei Esho Sisiria & 8 Others -Vs- Attorney General (2013) eKLR**.

11. There is no doubt pursuant to **Article 157 (11)** of the **Constitution** *supra* and **Section 25 (1)** the Office of the Director of Public Prosecutions Act that the DPP is obligated to seek permission of the court to discontinue any criminal proceedings. The issue for determination is whether the Application is merited in the circumstances obtaining in this case.

12. The *Nolle Prosequi* instrument before the court does not show if and how the provisions of **Article 157 (11)** of the **Constitution** were complied with. It is not demonstrated that the public interest and interests of the administration of justice have been considered before seeking to terminate these proceedings. The court is not also told how termination of the charge would prevent and avoid abuse of the legal process.
13. The Prosecution Counsel has not also informed the court if views of the deceased's family were sought, and/or information on intention to enter *Nolle Prosequi* was given to them. This is a serious charge with attendant public interest that would obligate the DPP to explain why it should be terminated.
14. The Application does not therefore meet the necessary constitutional and legal threshold, and is premature. It is hereby dismissed.

J. M. NANG'EA, JUDGE

**Judgement dated, signed and delivered virtually at Nakuru
this 4th day of December, 2025.**

In the presence of:

Mr. Wakasyaka for the DPP

Mr. Ndichu Advocate for the Accused

The Accused

The Court Assistant - Justine

J. M. NANG'EA, JUDGE