



REPUBLIC OF KENYA



KENYA LAW
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**Republic v Waweru & 3 others (Criminal Case 1 of 2019)
[2026] KEHC 3086 (KLR) (5 March 2026) (Ruling)**

Neutral citation: [2026] KEHC 3086 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MURANG'A
CRIMINAL CASE 1 OF 2019
TW OUYA, J
MARCH 5, 2026**

BETWEEN

REPUBLIC PROSECUTOR

AND

ANTONY KIMANI WAWERU 1ST ACCUSED

JANE WANJIRU WANYEKI 2ND ACCUSED

CATHERINE WANGECHI 3RD ACCUSED

JAMES MWANGI MUNGAI 4TH ACCUSED

RULING

1. The four (4) Accused persons herein were jointly charged with the offence of murder contrary to section 203 as read with 204 of the Penal Code. Particulars were that on the 23rd day December 2018 at Club San Siro in Kandara Sub-County within Murang'a County, the Accused murdered of Paul Mugo Nyoro.
2. The accused appeared before court on 29th April 2019 and all pleaded Not guilty to the offence. They were subsequently admitted to bail.
3. Trial commenced before Justice Wakiaga on 25th October 2022 and three witnesses testified. The matter has not proceeded since then and was slated for mention before this court today 5th March 2026 when the Counsel Mwakio for the State indicated their intention to terminate the charges against all the accused persons and tendered a nolle prosequi dated 5th March 2026 signed by Ann Penny Gakumu, SPSC. The intended withdrawal was premised under Article 157(6) of *the Constitution* of Kenya, Sections 82 and 83 of the Criminal Procedure Code and Section 5 of the ODPP Act.



4. The accused, all represented by Counsel Ms. Kamande, for 3rd and 4th accused and holding brief for Muturi Njoroge for 1st and 2nd accused did not express any objection to the Director of Public Prosecutions' decision and intention to withdraw the charges against the accused.
5. It is trite that the Director of Public Prosecutions derives powers from Article 157 of *the Constitution* of Kenya to exercise independence in prosecutorial decisions. The court is however charged by dint of sub-sections 6 and 7 thereof with the duty to oversee the exercise of such decisions. The above was well enunciated in the persuasive decision of Director of Public Prosecutions v Kiptoo & 6 others (Criminal Revision E1550 of 2024) [2024] KEHC 16692 (KLR) (Crim) (20 December 2024) (Ruling) Muteti J, remarked that:

“ 85. In *Mohit Vs The Director of Public Prosecutions of Mauritius (Mauritius)* [2006] UKPC 20 (24 April 2006) the privy council in determining whether a decision by the Director of Public Prosecutions of Mauritius to discontinue a private prosecution is susceptible to review by the courts had this to say:-

‘...It may be accepted, however, that a purported exercise of power would be reviewable if it were made:

- i. In excess of the DPP's constitutional or statutory grants of power— such as an attempt to institute proceedings in a court established by a disciplinary law (see s. 96(4)(a).
 - ii. When, contrary to the provisions of *the Constitution*, the DPP could be shown to have acted under the direction or control of another person or authority and to have failed to exercise his or her own independent discretion— if the DPP were to act upon a political instruction the decision could be amenable to review.
 - iii. In bad faith, for example, dishonesty. An example would arise if a prosecution were commenced or discontinued in consideration of the payment of a bribe.
 - iv. In abuse of the process of the court in which it was instituted, although the proper forum for review of that action would ordinarily be the court involved.
 - v. Where the DPP has fettered his or her discretion by a rigid policy — eg one that precludes prosecution of a specific class of offences.
86. The decision emphasizes the need for the court to exercise caution whenever it is called upon to exercise oversight over the DPP's decision to prosecute or not to prosecute. See *Diamond Hassham Lalji and Another Vs A.G and 4 Others* 2014 eKLR.
87. It is not open for a court of law to review the decision of the DPP without proof of any of the grounds set out in the *Mohit* case (*supra*) being established because that has the danger of encroaching on the decisional independence of the DPP contrary to the express provisions of Article 157 (10) of *the Constitution*.....

The considerations above if well taken into consideration by public prosecutors would bring about predictability and consistency in prosecutorial



decision making to avoid to demystify the question of withdrawal of cases in Kenya.”

6. It follows therefore that the court’s oversight role is mainly to ensure that the process is lawful, fair and in public interest. That it should not be subject to abuse or external influence. This therefore calls for the court to examine the reasons and circumstances behind the Director of Public Prosecution’s decision to terminate charges. The reason given in the instant case is that:

“We have reviewed the evidence as against all the accused persons and noted insufficiency of the same”

7. Upon perusal of the record, I have noted that the accused took plea in on 29th April 2019 and the matter only proceeded for trial on 25th October 2022 and three witnesses testified. Subsequently, it has been a series of adjournments for one reason or the other. This is in violation to Article 50 of *the Constitution* which guarantees an accused person’s right to a fair trial. Needless to say, prolonged trial with numerous mentions amount to delays in prosecution and are a violation of a person’s right to a fair trial and this may justify the Director of Public Prosecutions’ decision to prevent further injustice by terminating the trial.
8. I also take into consideration that the accused have been out on bond/bail terms and not in incarceration and that it is never too late to make a decision for an accused person’s liberty in the interest of justice.
9. I note further that there is no objection to the Director of Public Prosecutions’ decision to terminate the charges as against the accused persons. I am therefore satisfied that the exercise of power and decision by the Director of Public Prosecutions is lawful, transparent and in accordance with the law.
10. Orders:

The Nolle Prosequi dated 5th March 2026 as tendered by the Director of Public Prosecutions withdrawing charges as regards to the four accused persons is allowed. The charges are therefore marked as withdrawn and the accused all set at liberty unless otherwise lawfully held.

DATED, SIGNED AND DELIVERED IN OPEN COURT THIS 5TH DAY OF MARCH, 2026.

HON. T. W. OUYA

JUDGE

For 1st & 2nd Accused.....Mr Muturi Njoroge

For 3rd & 4th Accused..... Ms Kamande

For State.....Mr Nyakio

Court Assistant.....brian

