



**Republic v Kirimi & 2 others (Criminal Case E059 of 2024)  
[2026] KEHC 2726 (KLR) (24 February 2026) (Ruling)**

Neutral citation: [2026] KEHC 2726 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MERU  
CRIMINAL CASE E059 OF 2024  
HM NYAGA, J  
FEBRUARY 24, 2026**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**JACOB KIRIMI ..... 1<sup>ST</sup> ACCUSED**

**EZEKIAH MICHUBU ..... 2<sup>ND</sup> ACCUSED**

**CATHERINE KATHURE ..... 3<sup>RD</sup> ACCUSED**

**RULING**

1. On 23<sup>rd</sup> October 2025, this court delivered a ruling on the nolle prosequi that the Director of Public Prosecution (DPP) had presented to the court the following orders were issued:
  - a. The ODPP to file and serve the victim’s family’s advocates with the letter giving the reasons for the nolle prosequi, within such time as I will specify shortly upon delivery of this ruling.
  - b. All the necessary documents including the Occurrence Book (OB) report allegedly made by the deceased, to be supplied to the said advocate.
  - c. Upon service, the victim’s advocate shall have the opportunity to respond to the application in substantive manner.
  - d. The advocate for the accused shall equally be driven an opportunity to address the court.
  - e. For now, the nolle prosequi shall remain abeyance until compliance with the orders above is confirmed.
2. Subsequently, in compliance with the said orders, the DPP filed its reasons dated 11<sup>th</sup> November, 2025.



3. In a nutshell the DPP explained that the accused persons had been charged with the offence of murder contrary to section 203 as read with section 204 of the Penal Code. That thereafter, the DPP received a request from the advocate for the accused for a review of the decision to charge. The request was hinged on the ground that the deceased had reported a case of assault at Kiengu Police Station vide O/B NO. 13/28/7/2024 where he had mentioned one Kirinya as the person who assaulted him. That the deceased did not mention the accused persons. That having gone through the said O/B report and the witness statements, the DPP then exercised its constitutional powers, entered the nolle prosequi.
4. The family of the deceased through one Thiraine advocate, vehemently opposed the nolle prosequi.
5. Counsel for the deceased's family submitted that the application by the DPP was premature, an abuse of court process, contrary to public interest, the administration of justice and the rights of the deceased's family under Article 48 of *the Constitution*. It was further argued that allowing the nolle prosequi would undermine the integrity of the proceedings before the court, perpetuate injustice and deny the deceased's family closure.
6. In support of his submissions, counsel for the deceased's family cited the following cases:
  - a. Republic Vs Wekesa (2010) e KLR
  - b. Republic vs Duncan Kiprotich Koech and Another (Criminal Case No. 39 of 2012)
  - c. Crispus Karanja Njogu vs- Republic
  - d. George Gitau Wainaina Vs Attorned General (2001) e KLR
  - e. Republic vs Chief Magistrates Court Nairobi an 3 Others ex-parte Stephen Oyugi Okero (2015) e KLR
7. Counsel for the deceased's family further submitted on what comprises a dying declaration, which is said to link the accused persons to the offence.
8. Counsel urged the court to reject the nolle prosequi and adopt the reasoning of the courts in the case of Adan Keynan Wehliye vs Republic (2003) e KLR.

### **Analysis and determination**

9. I find that it is premature to look at the issue of the alleged evidence against the accused persons since the same goes to the merit of the case .
10. I find the following issues to be those that arise for determination: The role of a victim in the criminal justice system and in the determination of a nolle prosequi. The authority of the ODPP to enter nolle prosequi and the court's power over the same.
11. There is no doubt that there has been a considerable shift in the law and jurisprudence on the role of a victim in the criminal justice system.
12. Previously, the victim's role was basically that of a spectator as it was assumed that the State would adequately cater of the victim's interests. Thus, a victim of an offence had a very limited platform to address the court, for instance, in cases of withdrawal of a complaint.
13. The law now fully recognises that a victim or his/her family has a bigger role to play. Therefore, there are laws that have specifically oppressed what a victim is entitled to in a criminal trial. Such laws include:



- a. The Criminal Procedure Code (CPC) which at section 137D provides for consultation by the DPP when entering into a plea bargain agreement.
  - b. Section 329A of the CPC which provides for victim impact statements prior to sentencing a convicted person.
  - c. Section 20 of the Victim's Protection Act which provides for the right of the victim to be heard in cases of plea bargaining, bail hearing, sentencing or a decision to lay a charge or to appeal or withdraw such a charge.
14. So where do these provisions of the law derive their mandate from? That mandate comes from Article 50(9) of *the Constitution* which provides as follows: -
- “Parliament shall enact legislation providing for the protection, rights and welfare of victims of offences”.
15. Following from the above, it is clear that victim's rights in criminal case ought to be considered throughout the trial. However, such consideration should not infringe on the accused's right to a fair and expeditious trial.
16. It is not in dispute that the DPP has the constitutional power to prosecute or withdrawal any criminal case. As I had stated in the earlier ruling, that power is not unfettered and is subject to Article 157 (ii) of *the constitution*.
17. This position has been affirmed in several decisions. For instance, in Republic vs Siatah (2025) KEHC 6026 (KLR), the court held as follows:
- ‘Under Article 157[11] of *the Constitution*, the Director of Public Prosecution shall have regard to the public interest, the interests of the administration of justice and the need to prevent and avoid abuse of the legal process in the exercise of the powers conferred by the provision.
- Despite all the foregoing, the Director of Public Prosecutions may not discontinue a prosecution without the permission of the court as provided in Article 157[8] of *the Constitution*.
- Similarly, in Adan Keynan Wehliye vs Republic (2005) eKLR where it was held as follows: -
- The power of nolle prosequi should be used to advance the cause of criminal justice and not to obstruct it. The power cannot be used to infringe accuseds constitutional rights.
- The court can inquire whether the power which is vested in the Attorney General of presenting the nolle prosequi has been exercised within *the constitution* under the court's inherent power and under Section 123 (8) of *The Constitution*.
18. Similar findings were made in Seenaj ene Persimei Esbo Sisine and 8 Others vs Republic (2013) KEHC 3329 KLR and Crispus Karanja Njogu vs Republic(supra).
19. There is therefore no doubt that this court is clothed with the jurisdiction to determine whether an intended nolle prosequi is meant to advance the cause of justice or not.
20. In the instant case, the DPP first entered a nolle prosequi without availing any reasons for the same. Upon the delivery of the earlier ruling, the DPP then proceeded to give its reasons.



21. I have looked at the reasons adduced. It is not to be forgotten that the evidence that is with the DPP is the same at this stage. In other words, there are no new facts that are said to have arisen. It is thus questionable that the same evidence that was found to be sufficient in making the decision to charge is now found insufficient. That, I think is the complaint by the victim's family and they cannot be faulted for raising the objection.
22. While the court ought not to wade into the arena of conflict and start scrutinizing the evidence at this stage, it cannot shut its eyes when questions arise as to the propriety of the decision to enter the nolle prosequi in the face of stiff opposition by the family of the deceased. They are the ones who lost a loved one and deserve better answers than what has been provide to them.
23. For the foregoing reasons, I am of the view that the intended nolle prosequi fails the test set out under Article 157(11) of *the Constitution*. Allowing the same will make the court appear complicit, in the eyes of the victim's family in the denial of justice to them.
24. Whether the evidence to be adduced will be sufficient or not is a question to be answered when the time comes but for now, I feel that the scales of justice tilt in favour of the victim's concerns.
25. I therefore decline to allow the nolle prosequi and direct that the matter proceeds to full trial.

**DATED, SIGNED & DELIVERED AT MERU THIS 24<sup>TH</sup> DAY OF FEBRUARY, 2026.**

**H. M. NYAGA**

**JUDGE**

