

IN THE HIGH COURT OF TANZANIA

AT MWANZA

ORIGINAL JURISDICTION

(Mwanza Registry)

CRIMINAL SESSIONS CASE NO. 111 OF 2020

THE REPUBLIC

VERSUS

MIRAJI S/O ISSA KIKWEMBE 1ST ACCUSED

MIRAJI S/O HASSAN ABDALLAH KATENDELE 2ND ACCUSED

OMARY S/O JUMA HAMIS 3RD ACCUSED

SHANI S/P CLAUD SOSPETER 4TH ACCUSED

SEFU S/O JUMA RAMADHANI 5TH ACCUSED

FADHIL S/O JUMANNE 6TH ACCUSED

MOHAMED S/O RADHID HUSSEIN 7TH ACCUSED

ABDULHAKIMU S/O RAMADHANI HARUNA 8TH ACCUSED

HASSAN S/O YASSIN SAMNYANGE 9TH ACCUSED

RULING

12th & 12th February, 2021

RUMANYIKA, J.

When the murder case was today called on for plea taking and preliminary hearing, Mr. L. Meli learned state attorney informed the court that the Director of Public Prosecutions wished not to prosecute the accused any further. The learned state attorney therefore she prayed to withdraw

the charges under Section 91 (1) of the Criminal Procedure Act Cap 20 R.E. 2019.

Mr. Baltazari learned counsel for the accused did not object the charges now being withdrawn but he asked the court also to consider the fact that for the first time the accused having had been charged on 16/06/2016, eventually the case came for plea taking and preliminary hearing two years later and then hearing was scheduled for 28/7/2020 but no prosecution witnesses appeared until 3/8/2020 when the DPP withdrew the case, the accused were, based on the same facts and charges re-arrested and charged. Here they are. That unless the court otherwise directed, the DPP's conduct was but abuse of powers and the court process. That is all.

The issue is not whether the DPP had no powers to withdraw the case and based on the same material fact of the case charge the accused all over again **but** whether the DPP's powers could be exercised indefinitely however serious the charges might be going by the constitutional right of presumption of innocence. It sounds to me, if at all on this one the learned defence was believed, having had spent say 4 years behind the bars, and if the DPP now chose to have the accused re-arrested and charged afresh, the former could not even guess when they could be put on trial leave alone termination of

the proceedings. I think open ended prosecution serves interest of no body other than costing the state at whose expenses the presumed innocent remandees survived leave alone apparently the day light injustice. I understand that each case was determined on its own merits, in which case therefore, in case of investigations or even trials every individual case had its own complexities.

In the upshot, the charges of murder are marked as withdrawn under Section 91(1) of the CPA Cap 20 R.E. 2019 as it was prayed by Ms. L. Meli, learned state attorney. The accused are accordingly addressed and discharged. Should the DPP wish to, the accused may be re-arrested and charged all over again provided that the case shall be heard and the court conclude it on or by 01/07/2021 latest where the charges shall be dismissed and accused unconditionally discharged. It is so ordered.




S.M. RUMANYIKA
JUDGE

12/02/2021