



**Republic v Mwithalie (Criminal Case E037 of 2022)  
[2023] KEHC 462 (KLR) (30 January 2023) (Ruling)**

Neutral citation: [2023] KEHC 462 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MERU  
CRIMINAL CASE E037 OF 2022  
EM MURIITHI, J  
JANUARY 30, 2023**

**BETWEEN**

**REPUBLIC ..... APPELLANT**

**AND**

**NETO KIBURI MWITHALIE ..... RESPONDENT**

**RULING**

1. Before the court on an application for bail is a 23-year old man charged with the offence of murder c/s 203 as read with 204 of the Penal Code, and the court is considering his bail pending trial.
2. Bail is a constitutional right for all accused persons only subject to compelling reasons for denial of bail as may be presented in the circumstances of the case in terms of article 49 (1) (h) of the Constitution.
3. The probation officer’s pre-bail report dated January 4, 2023 does not recommend bail citing volatility on the ground as follows:

“[A]ccording to the findings made at this juncture in time the feelings of the most people to and the larger community feel that the accused person should not be given bond terms for now as the situation is so tense out there.”
4. The court does not lightly deny an accused his right to bail but, as an institution of law and order, the criminal court has a duty to balance the right of the accused to bail against the public interest in avoiding any further escalation of violence or revenge or retaliatory attack on the accused, when such information is brought to the attention of the court. In such circumstances, there exists in the words of the Constitution a compelling reason for denial of bail in the meantime until the situation giving rise to the risk of the revenge or retaliatory attacks has dissipated.
5. This court expects that the situation on the ground should have improved within six months from the date of the alleged offence on 6/7 November 2023.



## **Order**

6. Consequently, the court finds a compelling reason to warrant denial of bail for the accused at the present stage of the proceedings.
7. Bail application may be renewed after 90 days from today, in the event of changed circumstances.
8. In accordance with policy of the court when an accused is denied bail, priority hearing dates for the trial shall be given.
9. Order accordingly.

**DATED AND DELIVERED ON THIS 30<sup>TH</sup> DAY OF JANUARY, 2023.**

**EDWARD M. MURIITHI**

**JUDGE**

### **Appearances**

Mr. Masila, Principal Prosecution Counsel for the DPP

Mr. Mungai, Advocate for the Accused.

