



REPUBLIC OF KENYA



KENYA LAW
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**Republic v Mwirigi (Criminal Case E047 of 2023)
[2023] KEHC 19635 (KLR) (30 June 2023) (Ruling)**

Neutral citation: [2023] KEHC 19635 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CRIMINAL CASE E047 OF 2023
EM MURIITHI, J
JUNE 30, 2023**

BETWEEN

REPUBLIC PROSECUTOR

AND

TYSON MWIRIGI ALIAS GIDI ACCUSED

RULING

1. The accused, Tyson Mwirigi alias Gidi is charged with murder c/s 203 as read with 204 of the [Penal Code](#), the offence being alleged to have been committed on September 15, 2021 at Kulamawe area, Isiolo Township within Isiolo County.
2. On June 12, 2023, the Investigating Officer PC Buop Odhiambo swore an affidavit in opposition to bail. He avers that the accused is a flight risk for the reason that he disappeared after committing the offence on September 15, 2021 until his arrest on May 18, 2023. It is averred that the accused resides in the same locality with key prosecution witnesses, and therefore there is a high likelihood of interference. It is said the accused called and threatened PW1 while still in hide out, and attacked her on several occasions, and the same was reported to the police. He is apprehensive that if the accused is released on bail, he might collude with the second suspect, one David Mutuma alias rasta, who is still on the run and at large, and who is believed to be armed and a dangerous member of the notorious Gaza Group, to attack and harm PW1.
3. In reply, the accused by an affidavit sworn on June 16, 2023 denies either threatening PW1 or being in contact with his brother, the alleged second suspect David Mutuma alias rasta. In his view, no compelling reasons have been brought before the court to deny him his right to be released on bail/bond.



4. The court has considered the application for bail alongside the legitimate concerns raised by the prosecution for its denial, especially the likelihood of interference with key prosecution witnesses coupled with the lack of a fixed abode.
5. The court takes seriously the ground of likelihood to interfere with witnesses as this goes to very root of the DPP's ability to discharge its constitutional mandate of state's prosecutorial powers, and consequently the effective administration of justice in Criminal cases. Access to justice in criminal cases must involve as much the effective prosecution and punishment of the guilty as the acquittal of the innocent accused persons. Interference with witnesses is an obvious hindrance to the effective administration of criminal justice in that regard.
6. While upholding the accused's right to bail under Article 50 (1) (h) of the *Constitution*, the court must ensure that the ability of the DPP to mount an effective prosecution in exercise of his Constitutional mandate is not prejudiced by the likelihood of accused's interference with witnesses.

ORDERS

7. Accordingly, for the reasons set out above, the accused's application for bail is declined.
8. Hearing of the murder charges herein shall be heard on priority basis as with cases where bail is denied.
9. Bail application may be reviewed upon the testimony of the key prosecution witnesses and/or when circumstances change.
- 10 Order accordingly.

DATED AND DELIVERED THIS 30TH DAY OF JUNE, 2023

EDWARD M. MURIITHI

JUDGE

Appearances

Mr Mageria Advocate for the Accused.

Mr Masila, Principal Prosecution Counsel for the DPP.

