



REPUBLIC OF KENYA



**KENYA LAW**  
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**Republic v Karimi (Criminal Case E009 of 2023)  
[2023] KEHC 27314 (KLR) (19 December 2023) (Ruling)**

Neutral citation: [2023] KEHC 27314 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAJIADO  
CRIMINAL CASE E009 OF 2023  
SN MUTUKU, J  
DECEMBER 19, 2023**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**CHRISTINE KARIMI ..... ACCUSED**

**RULING**

1. Christine Karimi, the accused, faces two charges of murder contrary to section 203 as read with section 204 of the *Penal Code*. The particulars of the two charges are that on 8<sup>th</sup> June 2023 at Maasai Lodge area within Ongata Rongai Township, Kajiado North Sub-County within Kajiado County she murdered Tamara Amani Atieno and Tyrel Abiud Agogo.
2. The accused has denied committing the two offences.
3. Pending the hearing and determination of this matter, the accused through her counsel Mr. Ongaro, has filed a Notice of Motion application dated 3<sup>rd</sup> August 2023 brought under section 118 of the *Criminal Procedure Code* seeking orders to access call data records for mobile number 0719562380 for 7<sup>th</sup> and 8<sup>th</sup> June 2023 and that Safaricom Limited to supply the Applicant with subscriber details and call date records for mobile number 0719562380 for 7<sup>th</sup> and 8<sup>th</sup> June 2023.
4. The application is supported on the grounds that the Applicant is charged with two counts of murder alleged to have been committed on 7<sup>th</sup> and 8<sup>th</sup> June 2023; that the Applicant lost consciousness shortly after her husband, Rodgers Andere, call his sister Scholastica Andere and came to at Kenyatta National Hospital on the morning of 8<sup>th</sup> June 2023; that the intricate circumstances surrounding the murders that are the subject of this trial require detailed analysis of the call data subject of this application.
5. In her supporting affidavit sworn on the 3<sup>rd</sup> August 2023, the Applicant has deposed that it is within her rights to access the call data sought for in this application.



6. In his submissions to court, Mr. Ongaro stated that Article 50 of the *Constitution* provides the right to fair trial which includes right to adequate time to prepare the defence and that the Applicant requires the information sought to enable the court to resolve the discrepancies of this case and that the information sought is crucial to this trial.
7. The application is opposed by the Respondent on the grounds that the orders sought will infringe on the right of the victim under Articles 28 and 31 of the *Constitution* and that the orders sought will re-victimize the victim; that the application is misconceived and does not disclose any basis and is therefore an abuse of the court process.
8. The Respondent also relied on the Replying Affidavit sworn by Rodgers Kelly Andere, whose call data records are sought to be availed who claims that the orders sought will be prejudicial to him as the registered owner of the mobile phone number 0718562380.
9. I have considered this matter. The right to fair trial under Article 50 of the *Constitution* is one of the rights that cannot be limited. Article 50(2) of the Constitution lists the rights to a fair trial including the right to be informed of the to be informed of the charge, with sufficient detail to answer it. The grounds advanced in support of this application, inter alia, are that “The Applicant blacked out shortly after her husband, Rodgers Andere, called his sister, Scholastica Andere, only to wake up at Kenyatta National Hospital on the morning of 8<sup>th</sup> June 2023” and that “The intricate circumstances surrounding the murders that are the subject of this trial require detailed analysis of the aforementioned call data records.”
10. The Applicant proceeded to cite the provisions of the constitution on her rights and freedoms and claiming that the Prosecution and Investigation have a habit of concealing exculpatory evidence from accused persons.
11. I have considered these averments against the right of the owner of the mobile data records, specifically Article 31 of the *Constitution* that provides that:
  31. Privacy Every person has the right to privacy, which includes the right not to have— (a) their person, home or property searched; (b) their possessions seized; (c) information relating to their family or private affairs unnecessarily required or revealed; or (d) the privacy of their communications infringed
12. For this court, it is a balancing act between the rights of the accused to a fair trial which I have stated cannot be limited and the rights of her husband as spelt out under Article 31 above. The Applicant has not advanced sufficient reasons as to why she requires the call data records of her husband. To state that she overheard him speaking to his sister before she blacked out is not sufficient without evidence that the call she overheard relates to the offence before this court or is useful in her defence.
13. I believe her husband is a prosecution witness. He will be available for all the cross-examination the defence can put to him. The accused has not provided evidence to show what the “intricate circumstances surrounding the murders” are and how failure to get “a detailed analysis of the call data records” will prejudice the defence case.
14. To my mind, all the persons named by the applicant in her application are compellable witnesses if the prosecution fails to call them to testify and if compelling them to testify becomes necessary.
15. I have considered this application in light of the rights of an accused person to a fair trial and the evidence adduced in support of the application. I am of the considered view that the accused’s trial will not be prejudiced by lack of call data records of her husband. If such prejudice exists, this court has not



been given material to support the same. In my view, the accused is expressing her fears and suspicions without laying the basis for such fears and suspicions.

16. This court holds the view that the accused will be accorded a fair trial, and that the absence of call data records of the accused's husband will not prejudice this trial. Consequently, I hereby decline to grant the prayers sought in this application. It is hereby dismissed. Each party shall bear its own costs for this application.

17. It is so ordered.

**DATED, SIGNED AND DELIVERED THIS 19TH DAY OF DECEMBER 2023.**

**S. N. MUTUKU**

**JUDGE**

