



REPUBLIC OF KENYA



**Republic v Njeru (Criminal Case E026 of 2023)
[2023] KEHC 27202 (KLR) (19 December 2023) (Ruling)**

Neutral citation: [2023] KEHC 27202 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT CHUKA
CRIMINAL CASE E026 OF 2023
EM MURIITHI, J
DECEMBER 19, 2023**

BETWEEN

REPUBLIC PROSECUTOR

AND

ZACHEOUS MURITHI NJERU ACCUSED

RULING

1. The DPP has by an application dated 7/12/2023 seeking orders that the court denies bail to the respondent accused herein on the facts set out in the affidavit of Investigating officer No.88076 PC John Andama as follows:
 - “2. That I am investigating officer in this matter, the accused person is charged with two counts for the offence of murder contrary to section 203 as read with section 204 of the *Penal Code*.
 3. That the background of the case is that on 29th April 2023 at Kathanje market in Igambang’ombe Sub-County Tharaka Nithi County the accused person herein jointly with others not before court assaulted the deceased persons PC James Murithi Njeru and PC Emmanuel Kiprop. The deceased persons sustained fatal injuries birthing the case of murder before the court.
 4. That the deceased persons were on patrol after they got information that the accused was peddling drugs they went to make an arrest and they introduced themselves as police officers and they cuffed the accused who started shouting that the two police officers were thieves robbing him and called upon the mob to attack the police officers who sustained fatal injuries.
 5. That other accomplices and suspects are still at large and yet to be arrested. If the accused person is released on bond he will interfere with the investigations.



6. That, I am opposing the accused person to be released on bond terms on the ground that during the investigations the witnesses were truly afraid of the accused person, Accused person 1S likely to interfere and intimidate the witnesses if released on bond, since the case is yet to be heard and the witnesses are yet to testify.
7. That the witnesses are apprehensive that the accused person may cause them harm if released on bond, their apprehension being that the accused person is capable of killing police officers, major agents of security he is capable of reaching them as well.
8. That there was social call for justice leading to the arrest of the accused person; the local area leaders opine that it is best that the accused person stay in custody pending the hearing of the witnesses and also arrest of more suspects.
9. That the accused person is flight risk, Since it took time to convince him to come out from his hide out after him being discharged from hospital to record his statement. Further that after the incident happened on 29th April 2023 and the accused person went into hiding he could not be traced until sometimes in 15th November 2023 when he was arrested by DCI officers (Attached and marked JA-1 a copy extract of the investigation diary)
10. That justice must seem to be done also for the victims. Releasing the accused persons before the witnesses testify will greatly jeopardize the prosecution's case.”

2. The accused replied by a replying affidavit sworn on 8/12/2023 as follows:

- “1. That I am the accused/Respondent herein an adult of sound mind and competent to swear this affidavit in reply to the Prosecution/Applicant's Supporting Affidavit dated 7th December 2023 in respect to accusations of murder charges. I wish to reply as follows:
2. That I was working in my work place when the alleged deceased persons purported to be Police officers in plain clothes raided my business premises and they began brutally assaulting me.
3. That since the pain was unbearable due to assaults, I began screaming loudly for help.
4. That in response to the screaming the members of public and or the people nearby came for my rescue.
5. That the purported police officers did not stop assaulting me occasioning some inconveniences between them and the crowd.
6. That I am not a drug peddler and I have no criminal records whatsoever pending and or concluded in courts regarding the same.
7. That I was carrying out my normal legal businesses of an M-pesa Agent and a food pub to earn a living.



8. That due to the serious injuries I sustained, I felt unconscious and I was rushed to St. Orsola Hospital based at Matiri in Meru where I was admitted for treatments on 29th April 2023.
9. That later on 5th May, 2023 I was discharged from the said Hospital and the Medical Doctor set me at liberty to continue receiving treatment and medication from home. (Annexed hereto please find the Hospital Discharge Summary and marked "ZMN-1").
10. That on 13th September 2023, the DCI and or the police officers visited me in my home with an intention to record the statement which terms we agreed.
11. That on 18th September, 2023 I went to the DCIO Chuka Headquarters by myself to fill the p3 for purposes of yearning for justice. (Annexed hereto please see the Medical Examination Report (P3) dated 29th April 2023 and marked "ZMN-2")
12. That on 15th November 2023, I received a mobile call from the DCIO at Kathwana Police Station who informed me that they needed me in their station and without any resistance and or escort, I showed up in Kathwana Police Station where the police officers arrested me and took me to Chuka Police Station and finally arraigned me in court.
13. That at no single time I have resisted the orders of the police officers and or the authorities.
14. That at no time that I have colluded and or threatened a neighbor, a friend or a witness in regards to the alleged murder charges before this court.
15. That I have been in good faith cooperating with the police officers and upon the issuance of the bond/bail I shall always show up in court and authorities when I am needed to do so and without any resistance.
16. That I am a father of three children and my family including my wife are looking up on me to provide for them with food, school fees, clothing and basic needs.
17. That I am also responsible to take care and bring up my deceased sister's children who are two in number.
18. That one of my said deceased sister's child is mentally challenged and I am the only one responsible for the child's full time home care.
19. That I am the bread winner and supportive to my nuclear and extended family.
20. That I have been advised by my advocate which information I verily believe to be true that the offence of murder is bailable under Article 49 (1) (h) of the [constitution](#) of Kenya and I qualify under constitutional rights to be released on bond/bail on reasonable conditions.
21. That I will not abscond and I will avail myself to court when required to do so until the matter is concluded.



22. That I shall abide by any condition that shall be set by this honourable court as pre-requisite for grant of bond.
 23. That I shall not interfere with witnesses in this case and any investigations should any be carried.
 24. That I have been cooperating with the investigations so far.”
3. Counsel for the partis then made oral submissions on 11/12/2023 and ruling was reserved.
 4. The Court considers on a balance of probabilities that the accused is a flight risk in view of his long absence from the area of the incident subject of the murder charges herein for a period of five months between the incident and arrest which absence has not been explained in his replying affidavit. This is balanced against the elaborate steps in attempt to track and arrest the accused set out in detail in the investigation diary of the police exhibited the affidavit in support of the application.
 5. The court also considers that the multiple murder charges together compound the offence creating in the person charge a motivation to run to avoid the probability of conviction and severe sentence.
 6. The reason likelihood to interfere with investigations also affords a compelling reason in order to facilitate a fair trial and a fair opportunity for the DPP to prosecute the offences without interference with their witnesses. The accused may of course repeat the application for bail if so advised by his counsel after the key witnesses of the accused have testified and or the arrest of the alleged co-suspects.

ORDERS

7. Accordingly, for the reasons set out above, the court finds compelling reasons presented by the Prosecution in the application dated 7/3/2023 in the likelihood of absconding and interfering with witnesses and the investigations, and the accused’s bail is declined at this stage.

Order accordingly.

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

EDWARD M. MURIITHI

JUDGE

Appearances:

Mr. Gatobu for the Accused.

Mr. Masila for the DPP/Respondent.

