



REPUBLIC OF KENYA



**Republic v Mwangi (Criminal Case E009 of 2020)  
[2022] KEHC 11533 (KLR) (28 July 2022) (Ruling)**

Neutral citation: [2022] KEHC 11533 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIAMBU  
CRIMINAL CASE E009 OF 2020  
MM KASANGO, J  
JULY 28, 2022**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**TIRUS GACHURI MWANGI ..... ACCUSED**

**RULING**

1. Tirus Gachuri Mwangi was charged with offence of murder on March 19, 2020. He pleaded not guilty.
2. The accused applied for bail and this court by its Ruling of July 9, 2022 declined to immediately grant bail/bond on the ground that the accused was likely to interfere with two key prosecution's witnesses. Those witnesses are also siblings of the accused. The court ruled as follows:-

“... the court will grant the accused bond in the sum of Kshs.600,000 and one like surety but those bail terms are to take effect after two accused's sisters have testified.”

3. It will be recalled that the years of 2020 and 2021 the world was gripped with rising infections of COVID-19 virus. Kenya was not an exception and, for the better part of those two years physical hearing in courts were suspended. This case was therefore delayed in its commencement because of that.
4. The accused renewed his application for immediate release on bail/bond. On February 8, 2021 the court declined to alter the terms of release on bail/bond of accused. In summary, the court on that occasion ruled:-

“The court in giving conditional bail must have had safety of witnesses in mind. For that reason, I will not review the order granting conditional bail.”



5. The accused on June 28, 2020 once again renew his bail application. Although accused's counsel submitted that the commencement of the trial has been delayed by non-attendance of prosecution's witnesses that is not supported by the record of proceedings. As stated before the trial has been delayed due to the ministry of health measures which restricted in person court hearings.
6. The very reason the court first gave conditional bail still subsists up to today. The court in the case *Republic vs. Fredrick Ole Leliman & 4 others* (2016) eKLR had this to say about possible interference with the witnesses:
  - “60. Under the Bail and Bond Policy Guidelines, (BBIC) the courts have a duty to balance the rights of an accused person and the interest of justice. As much as the courts are expected to preserve the liberty of an accused person, public interest must also be taken into account. ...
  61. Undermining the criminal justice system includes instances where there is a likelihood that witnesses may be interfered with or intimidated; the likelihood that accused may interfere with the evidence; or may endanger an individual or individuals or the public at large; likelihood the accused may commit other offences. In this instances where such interferences may occur the court has to determine whether the integrity of the criminal process and the evidence may be preserved by attaching stringent terms to the bond or bail terms; or whether they may not be guaranteed in which case the court may find that it is necessary to subject the accused to pre-trial detention.”
7. Bearing the above in mind, and because the circumstances that were present when conditional bail was granted continue to subsist, the notice of motion dated March 2, 2022 is declined.

**RULING DATED and DELIVERED at KIAMBU this 28<sup>th</sup> day of JULY, 2022.**

**MARY KASANGO**

**JUDGE**

Coram:

Court Assistant : Mourice

Accused :- Present

For accused : - Ms. Waitere

For DPP :- Mr. Kasyoka

***RULING*** delivered virtually.

**MARY KASANGO**

**JUDGE**

