



REPUBLIC OF KENYA



**Republic v M'muga (Criminal Case E040 of 2022)
[2022] KEHC 12790 (KLR) (31 August 2022) (Ruling)**

Neutral citation: [2022] KEHC 12790 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CRIMINAL CASE E040 OF 2022
EM MURIITHI, J
AUGUST 31, 2022**

BETWEEN

REPUBLIC PROSECUTOR

AND

JOHN MUGAMBI M'MUGA ACCUSED

RULING

1. The Accused, Julius Mugambi M'Muga is charged with murder c/s 203 as read with 204 of the [Penal Code](#), the offence being alleged to have been committed on 27/6/2015 at Mugombone Village, Gatimbi Location of Imenti Central Sub-County within Meru County.
2. By an Affidavit sworn on 3/8/2022 by the Investigating Officer Sgt Nyaga Gaichu, the DPP opposes bail for the accused on two principal grounds, (1) that there is likelihood of interference with witnesses two of whom the accused is alleged to have threatened to kill leading to criminal prosecution in Githongo Principal Magistrate's Court criminal case No. E276 of 2022 of 14/6/2022 on charges of threatening to kill c/s 223 (1) of the Penal Code and stealing c/s 268 as read with 275 of the Penal Code (copies of the police reports on the threats and statements of the two witnesses are exhibited in the Affidavit) and (2) that the accused has been on the run since 27/6/2015, until 10/6/22 when he was arrested, and he is, therefore, a flight risk.
3. The witness statements attached to the Investigating Officer's Affidavit in opposition to bail have obviously not been subjected to cross examination and the court takes cautious regard of them, having been made in the context of the threat to kill and theft charges.
4. In reply, the accused by an affidavit sworn on 16/8/2022 denied that he had been on the run since 27/6/2015 and, indirectly, alludes to alibi defence that on the very day of alleged killing he was at Nairobi and thereafter "always been home" at Mugombone. The accused further pointed out that he was granted bail in the Githongo PMC Criminal Case No. MCCR 276 of 2022, where bail was



not opposed. Referring to a dispute relating to parcel of land Abothuguchi/Mariene/868 and Subdivisions thereof, the accused cited the Judgment of this court (Gikonyo, J) in Succession Cause No. 544 of 2013 and asserted that “this case has been brought against me as a scheme by the complainants in Githongo MCCR E 276 of 2022 to have [me] locked up in custody as they use my land.” He claims that “the persons behind my detention have illegally purchased our land.”

5. Counsel for the Accused, Mr. Mutege and for the DPP, Ms. Nandwa, made oral submission on their respective contentions, and ruling was reserved.
6. Upon perusal of the Accused’s Affidavit and its annexures of the Judgment of this court and various searched on related parcels of land, the court accepts that there existed a land dispute involving Silas Muthuri M’Linkanya and the accused, the latter alleging that the former had intermeddled in the Estate subject of P&A 544 of 2013 in getting for himself 3.13 ha (8.179188 acres) over and above what was decreed by court to him being 3 acres of parcel of land Abothuguchi/Mariene/868.
7. From the statement of Jacob Muguna attached to the Investigating Officer’s Affidavit, it is apparent that the accused was at the area from where it is alleged he had been on the run since 27/6/2015, on 28/3/2021 when he allegedly threatened the said witness. The Prosecution’s claim that the accused had been on the run from 27/6/2015 to 10/6/2022 is not properly founded.
8. However, the court takes very serious view of 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.
9. In the circumstances, the court is minded to deny bail to the accused on the strength of the statements of witnesses in the criminal trial for the offence of threats to kill. Although the statements were made in the context of the threats to kill charge, it is clear from paragraph 5 the Affidavit of the Investigating Officer that the said witnesses Monica Kamwithu and Jacob Muguna are “prosecution witnesses” in this case as well whom he threatened before arrest and charge at Githongo Law Courts. The DPP’s submission in that regard is also considered although the court has not seen statement.
10. Against such background, it is a real likelihood of interference with the witnesses who the DPP states are the same for the charge of threats to kill and the murder herein that presents a compelling reason for refusal of bail.
11. While upholding the Accused’s right to bail under Article 50(2) of *the Constitution*, the court balances the right to the need to 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.
12. The order that commends itself to this court in the circumstances of this case is a refusal of bail coupled with an order for expedited trial or taking of the evidence of the key prosecution witnesses de bene esse basis, so that bail is reconsidered after expiry of (90) days from the date hereof.

Orders

13. Accordingly, for the reasons set out above, the accused’s application for bail is declined.
14. Hearing of the murder charge herein shall be heard on priority basis as with cases where bail is denied,



15. Bail application may be reviewed upon the testimony of the key witnesses or the expiry of 90 days, whichever is later, so as to encourage the Prosecution to call evidence expeditiously.

Order accordingly.

DATED AND DELIVERED THIS 31ST DAY OF AUGUST, 2022.

EDWARD M. MURIITHI

JUDGE

APPEARANCES:

Mr. Mutegi for Accused

Ms. Nandwa for DPP

