



**Republic v Murega (Criminal Case E026 of 2022)
[2023] KEHC 28 (KLR) (16 January 2023) (Ruling)**

Neutral citation: [2023] KEHC 28 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CRIMINAL CASE E026 OF 2022
EM MURIITHI, J
JANUARY 16, 2023**

BETWEEN

REPUBLIC PROSECUTOR

AND

ELIJAH MUTWIRI MUREGA ACCUSED

RULING

1. By Notice of Motion dated 26th August 2022, the Accused who is out on Bond pending trial for the offence of murder c/s 203 as read with 204 of the [Penal Code](#), makes an unusual application for orders as follows:
 - “(b) That the Honourable court be pleased to order and/or direct that the prosecution witness and in particular one Benard Murega Thiaurudo refrain from intimidating, harassing and/or threatening the accused/applicant and as the Honourable court may appear just and reasonable in the circumstances of the instant case.
 - (c) That the Honourable court do make further or better orders as may meet the ends of justice.”
2. The applicant is supported by an affidavit in support sworn by the accused on 26/8/2022 as follows:
 - “1. That I am a male adult of sound mind and the accused/applicant herein hence competent to make this affidavit.
 2. That I was arrested and charged with the instant case on 9th of June 2022.
 3. That I was arraigned in court on the uⁿ day of June 2022, I took plea and was released on bond on 2nd June 2022.



4. That one Bernard Murega Thiauru, who is my brother and a witness in the instant case has now started inciting the other witnesses and they are threatening to have me arrested and charged with various offences with the sole objective of having my bond cancelled.
 5. That my said brother Bernard Murega Thiauru is a police officer and he has been threatening me all along and I have even reported the same to Nchiru Police station and the office of Director of Public Prosecution Meru (Annexed hereto and marked "EMMI" are copies of OB and letters").
 6. That in view of the aforesaid I am likely to be prejudiced if the prosecution witnesses are not ordered and/or directed to stop their threats to have me locked behind bars unlawfully."
3. The DPP has filed Grounds of Opposition dated 16/12/2022 as follows:
- “1. That the applicant was released on bond, pursuant to Article 49(1) (h) and at no time has the respondent moved the court for a cancellation of the bond terms.
 2. That the prosecution witness one Bernard Murega Thiauru is not the investigating officer in the murder case and as such he has no influence nor can he direct the respondent to cancel bond terms in respect of the Applicant.
 3. That the alleged intimidation, harassment and/or threats by Bernard Murega Thiauru has no causal link to the murder case.
 4. That the allegation by the applicant on being charged with other offences is miscalculated as the respondent only charges a person upon the evidentiary and public interest threshold having been met.
 5. That the applicant has rights which ought to be duly protected in as much as he is an accused person in the murder trial-and for this reason the-respondent has acted forthwith by duly calling for the police file for perusal and further directions.”
4. At the hearing, the DPP relied on the Grounds of Opposition filed and the Accused’s Counsel was content that the DPP has called for the files relevant to the OB report for necessary directions and asked the court to give a ruling on the pleadings filed.
 5. The Court has considered the application and, while there is no occasion for conviction of the prosecution witnesses for any threats of the Accused, it is opportune to observe that the right to a fair trial includes protection from retaliatory or other attacks and or threats on the accused by the complainant and or his witnesses. The finding of guilt or otherwise of an accused is a matter for the court in accordance with the law. That is quintessential fair trial. The Prosecution, its witnesses or sympathizers have no right to take the law into their hands and punish or threaten punishment on the accused for the offence(s) for or which he is being tried or suspected.
 6. The Court must for now leave the accused to the process of the law to file a complaint over any harassment, threats or action aimed at punishing him for an alleged offence or preventing him from effectively mounting his defence to the charges.



7. The Complainant and his witnesses must be warned of the risk, by any such threats or retaliatory attacks on an accused, of offending the provisions of the Penal Code on Offences relating to judicial proceedings.

Orders

8. Accordingly, for the reasons set out above, the Court makes the following Orders:
 1. The Accused may, as he may be advised by his counsel, file criminal complaint against the prosecution witnesses who have threatened him.
 2. The DPP shall also advise the witnesses of the offences, under the Penal Code provisions on Offences relating to judicial proceedings, that they may incur by any such threatened action against the Accused/Applicant.
9. There shall be no order as to costs.

Order accordingly.

DATED AND DELIVERED ON 16TH DAY OF JANUARY, 2023.

EDWARD M. MURIITHI

JUDGE

Appearances

Mr. Omari, Advocate for the Accused/Applicant.

Mr. Masila, Principal Prosecution Counsel for the DPP.

