



**Republic v Kalatu (Criminal Case E033 of 2023)  
[2023] KEHC 3031 (KLR) (6 April 2023) (Ruling)**

Neutral citation: [2023] KEHC 3031 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MERU  
CRIMINAL CASE E033 OF 2023  
EM MURIITHI, J  
APRIL 6, 2023**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**ELIUD MURIKI KALATU ..... ACCUSED**

**RULING**

**Introduction**

1. The accused person has been charged with the offence of murder contrary to Section 203 as read with Section 204 of the *Penal Code*, with the particulars of the offence that he “on the March 8, 2023 at Muringene Market in Igembe Central Sub-County within Meru County, jointly with others not before the court murdered Isaac Kivunja Mwenda.”

**The Prosecution’s case**

2. The Prosecution has filed an Affidavit sworn by Investigation Officer PC Karua on March 29, 2023 opposing release of the accused on bail on principal grounds of likelihood of interference with investigations and arrest of other suspects; interference with witnesses; and alleged hostility of the community towards the accused as detailed in Paragraphs 4-10 of the Affidavit, as follows:

- “4. That the accused person who hails from the same area with the deceased, committed the offence on March 8, 2023 by viciously stoning the deceased jointly with his accomplices who are still at large thus releasing him on bond may jeopardize their search. The murder occurred fairly recently and the deceased family needs time to heal. Contact with the accused person may bring up vengeful feelings and lead to committal of further offences owing to the



standing issues between the deceased and the accused who are in opposing militia groups.

5. That the witnesses in the matter remain fearful for their lives owing to the four (4) accomplices of the accused person still remaining at large.
6. That the prosecution and DCI Igembe South have since contacted the witness protection agency for assessment and placement of the witnesses under the witness protection programme owing to the threats levelled against the witnesses by the Accused person and his accomplices. That the agency is yet to file a report on the same as evidenced in their letter dated March 21, 2023 (annexed hereto as AKI)
7. That the respondent is likely to interfere and threaten witnesses since the main witnesses are well known to him and they are apprehensive he may actualize his threats and eliminate them as he has vowed.
8. That the community is very hostile and unstable at the moment and releasing the accused person on bond may put his life in danger.
9. That I am ready to avail witnesses at the earliest opportune time to the Honourable Court to have the matter heard and concluded within reasonable time.
10. That in view of the severity of sentence and all the above circumstances taken into consideration, it is my humble view that there is high probability that the accused persons may interfere with prosecution witnesses.”

### **The Defence case**

3. The defence case is that the deceased subject of the charge was beaten by irate members of the public who responded to the attack on the accused who at the material time was hiding from the deceased and his gang in a kitchen at Kangeta Market following the attack, a matter which he reported to the police.
4. In support of his bail application, accused has set out the background to the offence and the charge as long running family dispute involving his mother and step brother who together with the deceased subject of the murder charge herein, ran a militia group, Symboko Gang, that had severally attacked the accused and his employees culminating in the arrest and charge of two of the attackers, and the killing by a mob of the deceased herein.
5. The accused’s wife filed a separate Affidavit sworn on March 29, 2023 in support of her husband’s bail deponing that the accused’s family, which had been violently disrupted by the attack and subsequent arrest of the accused, were in dire need of protection from attack by the gang and for provision from the accused who was their breadwinner, and that while the accused has been in custody their home in the village was on March 28, 2023 vandalized and property including household goods and 8 motor cycles stolen, a report whereof had been made to the police; and that members of the gang had been harvesting miraa from the accused’s family farm.

### **Duty of the criminal court**

6. It is the duty of the criminal court under Article 50 (2) of the *Constitution* is to uphold rights in relation to fair trial set out therein. In applications for bail, the accused’s right to bail under Article 49(1) (h) is only subject to compelling reason for the denial of bail being shown by the Prosecution.



7. By Article 157, the Constitution mandates the Director of Public Prosecutions (DPP) to exercise the state's power of criminal prosecution for the discharge of which, the DPP must not be hampered by orders or directions of the court which impede effective prosecution of criminal cases. Hence the notion of compelling reasons for denial of bail. The court, therefore, has a duty to ensure effective execution of the Prosecution's prosecutorial mandate for the due administration of criminal justice.

### **The test for grant of bail**

8. The court considers that the test for the grant, or refusal, of bail must be whether the accused's right to bail in the particular case may be upheld with proper safeguards being put in place to ensure that the DPP's ability to effectively prosecute the alleged offence is not compromised. If the answer to this enquiry is that the grant of bail is not consistent with the DPP's ability to effectively prosecute, then there exists compelling reason not to grant bail. The flight risk of the accused absconding and likelihood of interfering with witnesses are the two most important key and core factors affect the due administration of criminal justice.
9. The possibility of the accused's flight is negatively assessed in view of the accused's vast interest in the area as a miraa farmer and trader. However, security may be required of the accused, and there is clearly no compelling reason to deny bail on this account.
10. With regard to necessary witness protection, the court accepts that the accused may not be held ransom by the Prosecution awaiting delayed consideration and acceptance of proffered witnesses by Witness Protection Agency. However, in the interest of ensuring necessary witness protection and, ultimately, the DPP's ability to effectively prosecute, the Court will make reasonable provision of a period of fourteen (14) days from the date of this ruling for the Prosecution and the Agency to determine the issue of protection of the witnesses. In that event, the order for bail granted herein will be stayed for the said period of 14 days. In addition, and for the same reason, the Court shall also stay, for the same period, the accused's right under Article 50 (2) (j) of the Constitution to access in advance and be supplied with evidence the prosecution intends to rely on, including witness statements, ahead of the trial.
11. There is no clear nexus in this case between the accused's bail and the investigations seeking the arrest of other suspects in the case. It is not shown how the accused presence out on bail will prevent or prejudice any operations for the tracing and arrest of the alleged co-suspects. The argument of hostile Community on the ground was similarly not demonstrated in view of the fact of existence of, and attack by, militia, which counsel for the DPP conceded at the hearing. The existence of militia on the ground is a serious cause for concern for the Police, not to justify the holding of the accused in custody for his own protection, but for the upscaling of police patrol, investigation and intelligence gathering and necessary pre-emptive action.
12. In the circumstances of this case, the Court considers that bail may, therefore, be granted to the accused upon strict terms set out below.

### **Orders**

1. Accordingly, for the reasons set out above, the Court makes the following orders:
  1. The accused shall, subject to the orders made herein, be released on bail pending trial-
    - a. Accused's Bail Bond is set at Kshs 5,000,000/- with one (1) Surety of the same amount, or Cash bail of Kshs 1,000,000/-.



- b. Accused shall upon release on bond or cash bail report to the Directorate of Criminal Investigation (DCI) Office at Maua every day at 8.00am in the morning or such other time as the DCIO may appoint, until further orders of the Court.
  - c. Accused shall further deposit his passport with Court as security against flight risk.
  - d. While on bond, the accused shall not contact or otherwise interfere with prosecution witnesses by physical contact or telephone or other communication media, whether in person or by proxy.
  - e. The order for bail herein granted is stayed for fourteen (14) days to permit the consideration and placement, upon approval, of the Prosecution's witnesses under the Witness Protection Programme, so that the order for bail shall take effect on the April 20, 2023.
2. The Prosecution has liberty to apply in the event of breach by the accused of any of the terms of bail made above.
2. Pre-trial Directions for hearing shall be taken on a date to be fixed in consultation with Counsel for the DPP and the Defence.

Order accordingly.

**DATED AND DELIVERED ON THIS 6<sup>TH</sup> DAY OF APRIL, 2023.**

**EDWARD M MURIITHI**

**JUDGE**

**Appearances:**

Mr Masila, Principal Prosecution Counsel for the DPP.

M/S Mbogo & Muriuki Advocates for the Accused.

