



**Republic v Micheni (Criminal Case E036 of 2023)
[2023] KEHC 18554 (KLR) (12 June 2023) (Ruling)**

Neutral citation: [2023] KEHC 18554 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CRIMINAL CASE E036 OF 2023
EM MURIITHI, J
JUNE 12, 2023**

BETWEEN

REPUBLIC PROSECUTOR

AND

BONIFACE MUTUMA MICHENI ACCUSED

RULING

1. The accused, Boniface Mutuma Micheni is charged with 2 counts of murder c/s 203 as read with 204 of the *Penal Code*, the offence being alleged to have been committed on 25/3/2023 at Muithwa Village, Rwompo sub-location of Imenti South Sub-County within Meru County.
2. On 24/4/2023, the Investigating Officer PC Patrick Gichohi swore an affidavit in opposition to bail. He avers that the safety of the accused may not be guaranteed if he is released on bail as there is a real threat of retaliation from the entire community for the act of killing mother and son. In his view, the accused is a flight risk who is likely to interfere with prosecution witnesses because he was in constant communication with some of them immediately after the commission of the offence.
3. In reply, the accused by an affidavit sworn on 17/5/2023 denies being a flight risk or in need of safety because if he is released on bail, he will go to live with his other family members in Mwichuine which is more than 20 kms from Mitunguu. He is a pastor and a father to a grade 3 pupil and his continued detention will affect the members of his church and his child. He has medical complications and requires special diet which can only be availed if he is released on bail, and he promises not to interfere with the witnesses. He cites *R v Okoth Obado* (2018) eKLR to support his assertion that no compelling reason exists to warrant his denial of bail.
4. The court has considered the application for bail alongside the fears raised by the prosecution for its denial, especially the bitterness hovering over the community due to the double murder of a mother



and her son. With that kind of atmosphere on the ground, the court is minded that the safety of the accused would be guaranteed if bail is denied at this stage.

5. The court takes seriously 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.
6. While upholding the accused's right to bail under article 50(2) of the Constitution, the court must 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.

Orders

7. Accordingly, for the reasons set out above, the accused's application for bail is declined.
8. Hearing of the murder charges herein shall be heard on priority basis as with cases where bail is denied.
9. Bail application may be reviewed upon the testimony of the key witnesses and/or when circumstances change.

Order accordingly.

DATED AND DELIVERED THIS 12TH DAY OF JUNE, 2023.

EDWARD M. MURIITHI

JUDGE

Appearances

Mr. Masila for DPP.

Mr. Ng'entu for the Accused.

