



**Republic v Diba & another (Criminal Case E001 of 2026)
[2026] KEHC 4045 (KLR) (Crim) (19 March 2026) (Ruling)**

Neutral citation: [2026] KEHC 4045 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ISIOLO
CRIMINAL
CRIMINAL CASE E001 OF 2026
SC CHIRCHIR, J
MARCH 19, 2026**

BETWEEN

REPUBLIC APPLICANT

AND

HUSSEIN DUBE DIBA 1ST RESPONDENT

ADAN HUSSEIN DUBEE 2ND RESPONDENT

RULING

1. On 03/02/26, this Court granted the Respondents bail pending trial of a murder charge. The Applicant did not oppose the granting of bail then.
2. However, before the respondents were formally released from custody, the Applicant herein filed Misc. Criminal Application No. E002/2026 seeking for revision of the order on bond. The Miscellaneous Application was consolidated with the present case .
3. Through the Affidavit of the investigations officer in the case, the Applicant states that the community within which the offence was committed is still hostile to the Accused persons, owing to the circumstances surrounding the committal of the crime, and thus putting the safety of the Respondents at risk. It is also stated that the Accused persons are likely to abscond as they reside within a proximity of a forest. It is finally stated that the suspects are likely to interfere with the livelihood of the “widow as he is still in love with her and he had already threatened to kill her at her house within Korbesa Town”.
4. In response, the Accused persons’ state that the Application is riddled with vagueness; it is not based on evidence. It is pointed out that the Application is an afterthought as there was no opposition to bail, when it was first granted.



5. The Respondents further argue that the allegations of absconding and hostility from the community are mere allegations as no evidence in support has been submitted before court. They have further stated that the members of the public, and Area Chief have not sworn any affidavit in support of the aforesaid allegations. The respondents further argue that the alleged interference with the “window” is vague as the widow in question remain unnamed and there is no evidence that the alleged threats have been reported to the police.
6. I have considered the rival submissions of the parties. It is important to point out from the onset that the right to bail pending trial, is a basic right under Article 49(1(h) of *the Constitution*. The Article provides the rights of an arrested person to include the right “ to be released on bond or bail, on reasonable conditions, pending a charge of trial, unless there are compelling reasons not to be released”.
7. What is for determination therefore is whether the state has presented compelling reasons, to deny a person facing a charge, what is his constitutional guarantee?
8. The Applicant deposes that owing to the foul manner in which the deceased was killed, the community members are still hostile towards the Accused persons and thus putting their safety at risk. However I agree with the respondents that the above allegations have been made without supportive evidence . More cogent evidence, through for instance an Affidavit of the Area- Chief , who by the nature of his or her work are always abreast of what is going on in their areas, ought to have been presented .
9. The allegation that the suspects are likely to abscond by the mere fact that they live near a forest are simplistic, and discriminatory, to those who border the forests.
10. The Applicant has also referred to the life of “the widow being put at risk”; that the suspect(s) are likely to interfere with her life or kill her. The circumstances of the crime forming the subject matter of this case are yet to come out as the trial is yet to begin. At this point in the proceedings, it is not known to this court who or whose widow is being referred to. And even if one was to assume that the widow is the wife of the victim of the crime, who between the two accused persons is a threat to , or has an interest in the said widow. The investigations officer has made a general statement without providing any more and better particulars of the alleged risks facing the unnamed widow. However the court does not operate on assumptions , guesswork or speculation . It was upon the Applicant to submit cogent evidence upon which the court can base its decision.
11. Therefore whereas the court agrees that the issues brought up by the state are relevant considerations for purposes of considering whether to take away the right to bail, there is no iota of evidence in support of the allegations made.
12. In arriving at this decision, I associate myself with the views of Justice Odunga in the case of In the case of Jonathan Kyalo Mutuku vs Republic (Machakos High court MIS .CR APP NO. E44 OF 2020) Justice Odunga had this to say: “From the constitutional point of view, however, an accused person has the right to be released on bond or bail, on reasonable conditions pending a charge or trial. Therefore, the accused does not have to apply for release on bond since a person on whom rights have been bestowed under *the Constitution* is not obliged to ask for the same. This right can only be limited where it is shown that there exist compelling reasons not to be released. Those compelling reasons include the ones set out hereinabove. It is however my view that the burden to prove the existence of the said compelling reasons falls squarely on the prosecution. That was the position in Republic vs. William Mwangi Wa Mwangi [2014] eKLR where Muriithi, J held that: “It is now settled that in the event that the state is opposed to the grant of bail to an accused person it has the onus of demonstrating that compelling reasons exist to justify denial of the Constitutional right to bail...”



13. Consequently, the Application for review is hereby disallowed and the earlier orders of this court made on 03/02/26 remains in place .

DATED, SIGNED AND DELIVERED AT ISIOLO, THIS 19TH DAY OF MARCH, 2026

S. CHIRCHIR

JUDGE

In the presence of:-

Roba/Kalelo-Court Assistant.

Mr. Majale for the Applicant

The Appellants

