

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KAKAMEGA
CRIMINAL CASE NO E011 OF 2026

REPUBLIC-----
PROSECUTION/APPLICANT

VERSUS

DIANAH MMBOLO alias KOKO----- 1ST ACCUSED/
RESPONDENT

DENZEL MMBOLO MUKOYA alias SINGERPORE-----2ND
ACCUSED/RESPONDENT

MCRAE WUMBA MUKOYA alias ZEPE alias ZEBEDAYO-----3RD
ACCUSED/RESPONDENT

RULING

1. The three (3) accused persons have been charged with the offence of murder contrary to section 203 as read with section 204 of the Penal Code, Cap 63 of the Laws of Kenya.
2. On 17th March 2026, the 3 accused persons took their plea, where they all pleaded not guilty, and their counsel prayed that the court grant the accused bail/bond pending trial.
3. The investigating officer swore an affidavit dated 11th March 2026 where he opposed the accused persons being granted bail by stating that the prosecutions key witnesses were the 1st Respondent's grand children aged 7 and 11 years and further that they were the nephew and niece to the 2nd and 3rd accused persons

and there is a high likelihood of them interfering with the prosecution's witness given their close relationship.

4. He further deponed that the 3rd Respondent had been rescued from a mob justice by the police after the incident before his arrest.
5. The Investigating officer prayed that the court deny granting the accused persons bail /bond due to the compelling reasons raised above.
6. I have duly considered the oral application before this court together with the affidavit sworn by the investigating officer and submissions by counsel from both sides. This court underscores that bail pending trial may be granted upon request at reasonable terms at the discretion of the court.
7. Article 49(1)(h) of the Constitution provides that an arrested person has the right *"to be released on bond or bail, on reasonable conditions, pending a charge or trial, unless there are compelling reasons not to be released."* Thus, while the right to bail is constitutional, it is not absolute. The court retains discretion to restrict bail where compelling reasons are established.
8. Bail in murder cases is not absolute but presumptive, as affirmed by the Court of Appeal in **Joseph Gitari Njeru v Republic [2018] eKLR**, where it held: ***"The right to bail under Article 49(1)(h) is inalienable for capital offences like murder, subject only to compelling reasons demonstrated by the prosecution, such as flight risk or witness interference."*** Similarly, in **Republic v Danson Mgunya & Another [2010] eKLR** the court described bail

as an "inalienable right" for murder suspects, restrictable only on compelling grounds including the likelihood of absconding, interference with witnesses, and the seriousness of the offence.

9. In the case of **Maalim v Republic (Criminal Case E001 of 2022)** **[2022] KEHC 13266 (KLR)**, *the court stated:*

"It is settled law that under article 49 (1) (h) of the Constitution, a person who has been arrested has a right to be released on bail or bond on reasonable conditions pending a charge or trial unless there are compelling reasons against such release.

A reading of this constitutional provision leaves no doubt that this right is guaranteed to every arrested or accused person irrespective of the seriousness of the offence charged. As correctly pointed out by the accused person in his supporting affidavit, the constitutional right to bond or bail pending trial is qualified not absolute as it is subject to existence of compelling reasons.

10. The investigating officer and the state are strongly opposed to the bail/ bond application being that the compelling reason is that the 3 accused are likely to interfere with the prosecutions key witness given the close family ties and pray that the court deny them bail.

11. The concerns raised by the investigating officer concerning possibility of interference of the key witnesses are valid but it is the only reason to be weighed the right of the accused to be granted bail.

12. For the above reasons, this court is inclined to grant this application for bond/bail. The application for bond/bail is hereby granted on the following terms:

13. Each of the accused persons is granted bond of Kshs. 500,000 with a surety of a similar amount.

14. It is so ordered.

15. Hearing 23.6.2026.

DATED, SIGNED AND DELIVERED AT KAKAMEGA THIS 24th DAY OF APRIL, 2026.

S.N.MBUNGI

JUDGE

In the Presence of:-

CA: Velma

In presence of Emily for the ODPP.

In absence of Katesh for the accused.