



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MACHAKOS**  
**CRIMINAL CASE NO. 55 OF 2011**

**REPUBLIC**

**VERSUS**

- 1. STEPHEN NYAMAI MBALU**
- 2. CHARLES MUISYO MWOLOLO**
- 3. ALEX TAMA MUANGE**
- 4. PETER MUANGE MUANTHI ..... ACCUSED/APPLICANTS**

**R U L I N G**

On 14<sup>th</sup> November 2011 all four Accused pleaded not guilty to a charge of murder contrary to Section 203 as read with Section 204 of the Penal Code (Cap 63 Laws of Kenya). After the plea, Mr Mung'ata, the learned counsel for the Accused informally applied for bail. The learned State Counsel Mr Mukofu informed the court that he did not have compelling reasons to object to the request for bail.

Indeed, under Article 49 (1) (h) of the Constitution of Kenya it is provided as follows:-

**“49 (1) An arrested person has the right-(h)to be released on bond or bail, on reasonable conditions, pending a charge or trial, unless there are compelling reasons not to be released.”**

The above provisions in the Constitution of Kenya, which was promulgated on 27<sup>th</sup> August 2010, changed the previous situation where bail was available only to persons who were charged with offences other than capital offences.

Counsel on both sides have not given any suggestion on what conditions they consider to be reasonable for the release of the Accused persons on bail. In my view, though the Constitution entitles the Accused to be released on bond pending hearing of their case, the court is enjoined to consider whether there are compelling reasons not to release them on bond.

The court has not been given any information as to where the Accused come from. Their occupations and conduct or demeanour has not been given. It is not known whether they will live in the neighbourhood of the deceased after they are released on bond or whether such release will be a peaceful encounter with relatives of the deceased while awaiting trial, taking into account that a person has already died. There are also no witness statements filed that would give the court a picture of what transpired. In short, though the Applicants are entitled to bail, the application is bare and open ended.

In my view, with the facts available to me, it is preferable for the Accused to remain in custody, both as an insurance against their possible absconding as well as for their own safety and security. I find these to be compelling reasons to deny them bail.

Consequently, I decline to grant the bond/bail requested.

Dated and delivered at Machakos this **15<sup>th</sup>** day of **December** 2011.

**George Dulu**

**Judge**

**In presence of:-**

For the Accused/Applicants: **Ms. Ombega holding brief for Mr Mung'ata**

For State: **Mr Mwenda**

Court clerk: **Nyalo**