



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MACHAKOS**

**CRIMINAL CASE NO. 11 OF 2018**

**REPUBLIC.....RESPONDENT**

**VERSUS**

**1. JOSEPH TAKWA KYALO**

**2. SAMUEL MUTHINI MUASA.....APPLICANTS**

**RULING**

1. The Applicants have filed a notice of motion dated 19<sup>th</sup> July, 2018 seeking bail/bond pending trial. The grounds upon which the application was made was that they are married with children and established homes and that they are willing to comply with the conditions the court shall set for bond. That there is no compelling reason to warrant denial of bail.

2. The substantive law on grant of bail is found under Article 49 (1) (h) of the Constitution which states:

**“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.” (Emphasis mine)**

3. Applying the test, this court ought to consider whether or not the Applicant is a flight risk or is likely to interfere with the witnesses. In the case at hand, the prosecution has not contested the motion or any evidence tendered that the applicants are a flight risk or are likely to interfere with the witnesses. In the circumstances I am inclined to allow the application on the following terms.

**a. Each accused person be released on a bond of KShs. 1,000,000/- with one surety of a similar amount.**

**b. The accused persons shall not in any manner interfere with witnesses and must attend court whenever required to do so.**

**c. The accused persons shall not leave the jurisdiction of this court without this court’s prior permission.**

**d. In the event of default to observe the terms of bond, the same shall stand cancelled and the sureties called to account.**

It is so ordered.

**Dated and Delivered at Machakos this 4<sup>th</sup> day of October, 2018.**

**D.K.KEMEI**

**JUDGE**

**In the presence of:-**

Langalanga - for the Applicants

Machogu - for the Respondents

Josephine - Court Assistant