

IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
MISC. CRIMINAL APPLICATION NO. 100 OF 2002

BETWEEN:

JOSEPH KOTOKWA.....1ST APPLICANT

-and-

ALFRED KUMPHASA.....2ND APPLICANT

-and-

THE REPUBLIC.....RESPONDENT

CORAM: HON. JUSTICE A.C. CHIPETA

Mzumala; of Counsel for the Applicants

Kamwambe; Chief State Advocate,

of Counsel for the Respondent

Kabvina; Official Interpreter

RULING

The two Applicants herein are jointly under trial in the Second Grade Magistrate's Court at Nsanje. This is in Criminal Case No. 86 of 2002. The charges they are facing are conspiracy to commit a felony contrary to Section 404 of the Penal Code in the first count and Theft by Public Servant relating to a sum of K113,900.00 in the second count.

The application the two Applicants have brought to this court is one for variation of conditions of bail. They were granted bail on 23rd April, 2002 by the trial Magistrate but have so far continued to stay in custody. Among the conditions set down for their release is a requirement that they each deposit with the court a sum of K45,000.00 as security for their attendance at trial.

At the hearing of this application the two Applicants were represented by Mr Mzumala, of Counsel. The Respondent, which is the State, was represented by Mr Kamwambe, the Chief State Advocate. It is the complaint of the Applicants in this case that the sum demanded by the trial court as a deposit as one of the conditions for their release on bail is too excessive and that they are unable to raise such money. Referring to Section 118(2) of the Criminal Procedure and Evidence Code Mr Mzumara argued for a reduction of this figure in the light of the

fact that when fixing such sum a court ought to have regard to the circumstances of the case and to avoid fixing an excessive sum.

The State indicated that it has no objection to the present application. Mr Kamwambe actually expanded on the application of the Applicants by further referring to Section 121(1) of the Criminal Procedure and Evidence Code and to the Bail (Guidelines) Act to highlight the uniform stand of the law on the point that the amount of bail ought not to be excessive.

At the time of the hearing of this matter the lower court's file was not in. I felt it would be unfair to determine the application herein without examining the record of the case in the lower court and assessing the circumstances in which the lower court issued the order now being questioned. The record in issue has since been brought to my attention and I have duly scrutinized it.

I am, after undertaking this exercise, convinced that the sum the applicants have been asked to deposit with the court before they can be released on bail is indeed quite excessive. I do well appreciate that Nsanje District is a border district and that to ensure that accused persons duly attend their trials when released on bail despite the likelihood of temptation to cross borders relatively stiff conditions ought to be set down. In this case from what is on record the figure demanded appears to have been plucked from the air as there does not appear to have been any assessment of the applicants' financial abilities and means conducted before the order was made.

Noting that there are other conditions, such as frequent reporting to police, and surrender of travel documents, which the lower court prescribed over and above the deposit herein, I think it is only fair that the sum to be deposited be reduced to a more realistic level. In matters of bail the sum promised on bond or the sum demanded as deposit, as I understand it, is never meant to stand in as a possible replacement for the money or value of property specified in the applicable charge. Rather such sum is merely supposed to be

high enough to induce Applicant to fear its loss should he fail to come to trial. In this case I think a K5,000.00 deposit for each of the accused persons will suffice when all the other conditions remain in place. I accordingly order that in lieu of the K45,000.00 the lower court ordered the Applicants to deposit they now only deposit K5,000.00 each in court as security for their attendance at trial. To this extent the conditions of their bail are varied and the application herein therefore succeeds.

Made in Chambers this 13th day of June, 2002 at Blantyre.

A.C. Chipeta

JUDGE