

**IN THE HIGH COURT OF MALAWI
LILONGWE DISTRICT REGISTRY
MISC CRIMINAL APPL. NO.155 OF 2007**

SHADRECK PHIRI.....APPLICANT

-AND-

THE REPUBLICRESPONDENT

CORAM: HON.JUSTICE CHINANGWA

Mr Chidzonde, Counsel for the state
Mr Tukula, Counsel for Applicant
Mr Chulu, Court Interpreter

RULING

The applicant Shadreck Phiri through counsel Tukula applies for bail under section 42(2)(e) of the Malawi Constitution and section 118 of the CP & EC. Counsel filed in court a sworn affidavit and skeleton argument which he adopted. The skeleton argument state that the applicant was on 19th October, 2007 driving a lorry from Blantyre to Lilongwe. He carried Afford members to a convention in Lilongwe. He was involved in a fatal road accident at Linthipe in Dedza district. Twenty-eight (28) members died in that road accident. The said accident occurred, so it is alleged, because the applicant's

vision was blamed by dazzling full beam lights from an on coming motor vehicle. The applicant sustained bodily injuries and was admitted at Dedza district hospital. On 21st October, 2007 he was arrested by police and placed in custody. Then on 25th October, 2007 he was charged with manslaughter at Dedza Magistrate Court. He is said to have denied the charge. Thereafter he was remanded by court to wait his trial at the High Court.

It is submitted that applicant is still in agony as a result of the injuries sustained. He wants special medical attention in private hospitals because presently he receives pain killing tablets. Several case authorities on bail have been cited. Notably, **Zgambo Vs Rep, MSCA Criminal Appeal Case No. 11 of 1998. on this proposition:**

“An accused is presumed by law to be innocent until his or her guilt has been proved in Court, and bail should not ordinarily be withheld from him as a form of punishment. The Court should therefore grant bail to an accused, unless this is likely to prejudice the interests of justice.”

Counsel Chidzonde for the state submitted that the offence against the applicant is a road traffic offence namely manslaughter. The police docket has not been transferred to

the DPP's office. Once it is received the DPP would decide whether to proceed with manslaughter or reckless driving. Meanwhile the state did not object to bail being granted.

My starting point is section 42(2)(e) of the Malawi Constitution:

“42(2) Every person arrested for, or accused of, the alleged commission of an offence shall, in addition to the rights which he or she has as a detained person, have the right-

(e) to be released from detention, with or without bail unless the interests of justice require otherwise.”

The right to bail which is stipulated in section 42(2)(e) of the Constitution is not an absolute right. It is subject to the interests of justice. In *Lunguzi Vs Rep*, MSCA, Criminal Appeal No. 1 of 1995 their Lordship stated as follows:

“In our view the right to bail which section 42(2)(e) of the Constitution now enshrines does not create an absolute right to bail. The section still reserves the discretion to the courts and it makes the position absolutely clear that courts can refuse bail if they are

satisfied that the interest of justice so requires.”

I am obliged to concur with their lordships. However in the present application there are matters which are unclear. First where does he come from? The home particulars have not been disclosed.

Second, the nature and particulars of his employment are not disclosed. That is whether he is self – employed or works for a company.

Third, it is unclear whether applicant appeared before Dedza Magistrate Court for purposes of plea or committal for trial in the High Court. A copy of the court record should have been attached to the application to enable this court know the legal position..

fourth, much as it could be true that applicant sustain injuries. The nature and degree of the injuries is undisclosed. It would be unreasonable to accept such assertion without the support of medical opinion recommending specialized medical treatment.

Indeed the state has no objection to applicant being granted bail. That notwithstanding, I have to be satisfied that there is

sufficient information about the applicant. The sworn affidavit of counsel Tukula is brief and lacks the required essential information mentioned above. In the circumstances it would be unsafe and against the interest of justice to grant bail. Bail not granted.

Pronounced in Chambers on 21st day of November, 2007 at Lilongwe.

R.R. Chinangwa
J U D G E