

IN THE HIGH COURT OF MALAWI LILONGWE DISTRICT REGISTRY

- 1. Misc. Criminal Application No. 59 of 2007
Leornard Mondomo Vs Republic**
- 2. Misc. Criminal Application No. 60 of 2007
Emmanuel Khembo Vs Republic**

CORAM: HON. CHINANGWA, J.

Nkhono, Counsel for Applicants
Ms Mchenga, Counsel for Respondent
Ms Msiska, Law Clerk

R U L I N G

The two applications have been consolidated into one hearing because the subject matters are the same, bail.

The state being represented by Ms Mchenga raised no objection. However, I am very reluctant to grant bail.

First, it has come to my knowledge that very often counsel take a simple approach in matters of bail. The state is often not conversant with the facts of the case, but not bothering to enquire from the police an update of the case.

Second, it has come to my knowledge that where prosecuting counsel is ill-prepared, it is the practice to detail another counsel on his/her behalf.

In these two applications before me prosecuting counsel is Mr Nankhuni, instead counsel Nkhono appeared on his behalf. No reason was given why counsel Nankhuni was unable to appear in person to prosecute the applications. Counsel for the state had no information regarding the position of the case. Therefore her submission that the state had no objection to bail being granted was not on merit.

It is recognized that under section 42 of the Constitution bail is a constitutional right. However, it is not an absolute right. Therefore both prosecuting counsel and counsel for the state have to be serious in their respective roles. Again court should not create a walk-through or a mere-formality atmosphere on a bail application. To make it clearer a court should not merely rubber stamp the granting of bail without satisfying itself that bail is merited.

In conclusion bail not granted.

PRONOUNCED in Chambers on this 13th day of Jul, 2007 at Lilongwe.

R.R. Chinangwa
J U D G E