

# IN THE HIGH COURT OF MALAWI

LILONGWE REGISTRY

MISC. CRIMINAL CASE NO. 46 OF 2008

**BETWEEN**

**GIFT CHIMTHUNZI ..... APPLICANT**

**- AND -**

**THE REPUBLIC ..... RESPONDENT**

**CORAM : CHOMBO, J.**

: Mtupila, Counsel for the Applicant

: State representative, Absent

## **RULING**

Before me is an application for bail. The applicant was arrested on 28 February 2008 on an allegation of murder. It is now submitted that he has not been formally charged or brought before a court of competent jurisdiction to answer the allegation or to be told the reason for his incarceration. The State was absent and the applicant's Counsel did not disclose whether or not the State was served, nor was evidence of service submitted to court.

It was submitted by Counsel that he had informal information that the postmortem examination results show that death occurred as a result of excessive drinking. With respect it would be difficult for the Court to rely on any "informal information". Whilst the need, at the moment, is not to concretise any evidence

before court, the court might be considered unwise to base its decisions on some “informal information” supplied to Counsel.

Whilst the court accepts Counsel’s submission that murder is a bailable offence it should also be borne in mind that the right to bail is not absolute and that murder is a serious offence and courts have to take into account all the circumstances of the offence before granting bail.

I therefore order that the State must be served with the notice and proof of such service provided to court accordingly. This will give the State an opportunity to respond to the submissions of the applicant.

**MADE** in Chambers this 25<sup>th</sup> April, 2008.

E.J. Chombo  
**J U D G E**