



REPUBLIC OF MALAWI

27 JUL 2022
P.O. BOX 109
ZONIBA

IN THE HIGH COURT OF MALAWI ZOMBA DISTRICT REGISTRY MISCELLANEOUS CRIMINAL APPLICATION NO. 72 OF 2021

AUCKLAND DICKSON

APPLICANT

AND

THE REPUBLIC

RESPONDENT

Coram:

Z.J.V. Ntaba, Hon. Justice

Capt. A. Kamwendo, Rtd. Counsel for the Applicant

Mr. A. Mphepo, Counsel for the State

Ms. C. Nyirenda, Court Clerk and Interpreter

BAIL RULING

1.0 APPLICATION DETERMINATION

- 1.1 The Applicant is hailing from Mulipa village under Traditional Authority Nsanama in Machinga. He operates a business as well as resides at Songani Trading Centre in Zomba. On 14th July, 2021, he had gone to pick up charcoal and upon being stopped at Mposa/Chipole by traffic officers, he hit and killed Inspector Laudon Frank Bizani who was Officer in Charge for Mposa Police Unit. He indicated that he was denied bail twice in the magistrate courts. He argued he should be granted bail on terms and conditions that the Court deems fit as it is not known when his matter will commence. He also said he has no capacity to interfere with police investigation. He supported his application with skeleton arguments which highlighted how the law was in favour of him being granted bail.
- 1.2 The State in their affidavit in response confirmed the facts of the case. They prayed that the Applicant not be granted bail as the investigations were completed and that they were

awaiting the file in two (2) weeks from the hearing. They prayed that a speedy trial would be most appropriate in the case herein.

- 1.3 The Court on 16th September, 2021 granted the State's request for an adjournment but gave directions. The State was directed to be ready for a pleas and directions hearing within sixty (60) days and make disclosures within 30 days from the date of the order. The pleas and directions hearing commenced on 16th December, 2021 with the Applicant applying for bail reconsideration because the State had failed to comply with the directions of the Court. The State in response conceded that they had not complied with the September ruling as such they were seeking another adjournment. The State argued that the investigations were concluded but the police docket cannot be disclosed because Zomba Central Hospital had not released the postmortem examination report. They argued that they are taking all necessary steps to ensure that the report is provided so that they can proceed to comply with the Court order.
- 1.4 In determining this application, the Court recognizes that bail is a constitutional right however the same is not absolute but must granted based on the interest of justice as well as the Judge's discretion upon examining all the facts and circumstances of the case. Let me restate the sentiments that I just made in another pleas and direction hearing today. Firstly, let me deal with the State not being able to comply with the Court's directions. It seems like it has become standard for the State not to move beyond bail applications in homicide cases. Every time, this Court has ordered disclosures or plea and directions hearings, the State's go to excuse is the investigations are not completed or the case docket has not been transmitted despite efforts by them. The Court is extremely frustrated with the State's lack of seriousness especially due to the fact that they in the first place sought the adjournment. Secondly, the allegations against the accused are extremely serious especially noting that the circumstances in which the offence was committed.
- 1.5 The Applicant argued that the State's failure to comply with the Court Order entitles a reconsideration of his bail. He stated that he is ready to comply with all the conditions which the Court shall impose. The Court recognizes that the Criminal Procedure and Evidence Code sets down in section 161G that a person can be kept in lawful custody or detention for ninety (90) days and a further thirty (30) days if the State so applies to the Court as per section 160H. Notably, in the case herein, the said pretrial custody limit for the Applicant herein expired in October, 2021. Therefore, this Court has to examine whether the circumstances herein including the law like the Bail Guidelines Act can be invoked in favour of the Applicant.
- 1.6 Guideline 4 of Part II in the Bail Guidelines Act stipulates that the likelihood that the accused, if released on bail, will attempt to evade his or her trial is an important consideration. Additionally, the nature and the seriousness of the offence for which the

accused is to be tried, the strength of the case against the accused and the temptation that he or she may in consequence attempt to evade his or her trial to mention a few are all aspects for a court's consideration. Taking into account the circumstances of the case herein despite the non-compliance by the State, it is this Court's considered opinion that the case herein is very serious and the nature in which it was committed do not shift the balance to the Applicant. Therefore, the interests of justice as well this Court's discretion are not in favour of granting the Applicant bail.

2.0 **ORDER**

- 2.1 This court therefore after examining the arguments by both the Applicant and the State orders bail is hereby denied.
- 2.2 The State is ordered again to do all necessary issues for pretrial procedures and ensures this matter is tried by March, 2022. The Director of Public Prosecutions and Inspector General are notified of the importance of this case and need of urgent attention by their offices.

I order accordingly,

Dated this 16th day of December, 2021.

Z.J.V Ntaba

JUDGE