

IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
MISCELLANEOUS CRIMINAL CASE NO. 38 OF 2007

BETWEEN:

JOHN TANGWEAPPLICANT

- AND -

THE REPUBLICRESPONDENT

CORAM: HON. JUSTICE M L KAMWAMBE
M/S Kunitengo of Counsel for the State
Mr Mapemba of Counsel for the Applicant
M/S Maida Official Interpreter

RULING

Kamwambe, J

This is an application for bail pending trial in line with section 42(2) (e) of the Constitution which gives a right to the arrested person to be released from detention, with or without bail unless the interests of justice require otherwise.

The onus lies in the State to demonstrate the interests of justice that require the accused to continue to be under incarceration. The State has simply said that on or about the 28th December, 2005 the applicant quarreled with the deceased, who was his wife and who was six months pregnant. That the applicant beat the deceased who after a few hours after the beating had a

miscarriage and died. The State further said that there is strong evidence against the applicant that there is a strong probability of securing a conviction of murder. It also stated that this matter is put on the homicide list whose trials are scheduled to commence in April 2007. In short the State opposes the granting of bail.

On its part the applicant depones that it was the wife who was aggressive and all he did was to parry deceased blows and in the process the deceased leaned on a heap of potatoes which were heaped in their house. He also said that the deceased was shouting on top of her voice and it took her sister who came to the house to calm her. That since the deceased refused to cook food well before the quarrel started, the applicant prepared supper and ate it together with the deceased. Later in the night she suspected she was going to have a miscarriage as she had a fever that day. She had abdominal pains. This was her third miscarriage in a space of 4 years. At dawn, she died.

When I heard this case on the 6th March, 2007 I ordered that the case be adjourned to Friday the 9th day of March, 2007 so as to enable the State furnish further information to the court in accordance with section 3 of Part II of the Bail (Guidelines) Act No. 8 of 2000. Today, the 16th March, 2007 when I am writing this ruling, no such further information has been given to me.

I have stated a myriad times that even if this is not trial stage still the State should bring out affidavit evidence at least to show that on a balance of probabilities the applicant committed the offence and under what circumstances. I have said that it is not enough just to say that there is overwhelming evidence against the applicant without demonstrating it. Otherwise how else is the State going to show that the interest of justice requires the applicant not to be released. In my view the State has failed to convince the court that there is a genuine interest of justice to warrant further incarceration of the applicant. On the other hand the applicant has gone a long way to explain what happened and that he was tortured by the police and that that is why he admitted in the caution statement that he killed his wife. I should also hasten to say that in the absence of a postmortem report or reference to it the real cause of death is not known, after all, we are told that she had complained of fever.

In the light of the foregoing I order that the applicant be released on bail on conditions to be set by the Registrar. It is so decided.

Made in Chambers this 16th day of March, 2007 in Blantyre.

M L Kamwambe

JUDGE _____