

**IN THE HIGH COURT OF MALAWI
LILONGWE DISTRICT REGISTRY
MISC CRIMINAL APPL. NO.137 OF 2007**

TADZIWANI KALIKILIAPPLICANT

-AND-

THE REPUBLICRESPONDENT

CORAM: HON.JUSTICE CHINANGWA, J

Mr Chidzonde, Counsel for the State
Mr Kambauwa, Counsel for Applicant
Mr Chulu, Court Interpreter

RULING

The applicant Tadziwani Kalikili through counsel Nyirenda (standing in for counsel Kambauwa) applies for bail with/without conditions.

The application is under section 118 of the Criminal Procedure and Evidence Code and section 42(2)(e) of the Malawi Constitution. It was deponed by counsel Kambauwa that applicant hails from v:Mawiri, T/A

Kalumo, D:Ntchisi. He was married to the deceased. The marriage experienced troubles because the deceased was alleged to be having an affair with another man. Applicant severely beat her. On the following day she was found dead outside the house. Applicant was arrested by police on 1st August, 2004. Since that date he has remained in remand. No further legal action taken by the state. He now applies for bail or be brought before a court of law.

Counsel Chidzonde for the state submitted that the interest of justice would require applicant to be released on bail with or without conditions as the court deems fit.

My starting point is section 42(2)(b) of the Malawi Constitution. It provides:

“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-

(b) as soon as it is reasonably possible, but not later than 48 hours after the arrest, or if the period of 45 hours expires outside ordinary court hours or on a day which is not a court day, the first court day after such expiry, to be brought before an independent and impartial court of law and to be charged or to be informed of the reason for his or her further detention, failing which he or she shall be released.”

The applicant has been on remand since 1st August, 2004. It is not indicated whether the applicant is on formal court remand or not. It is also not indicated whether he was committed for trial before the High Court.

Counsel Kambauwa cited section 42(2)(e) of the Malawi Constitution. I reproduce it here for purposes of clarity.

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

The applicant has given two names as possible sureties namely; Mr. Kalikili Mtsilo(father) and Mr Jeke Mtsilo (uncle) both live at v: Katchulu, T/A: Kalumo, D: Ntchisi. He has undertaken that once granted bail he would live with these people at the given home village.

I take into account that applicant has been in custody since 1st August, 2004. A period of over 3 years. During all this time the state has taken no action to prosecute the applicant or take other necessary legal steps. Remanding the applicant without legal formalities amounts to illegal detention. The state’s conduct cannot be condoned. Hence in the interest of justice the applicant is released forthwith unconditionally.

Application succeeds.

Pronounced in Chambers 21st November, 2007 at
Lilongwe.

R.R. CHINANGWA
JUDGE