

IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

MISCELLANEOUS CRIMINAL APPLICATION NO. 431 OF 2006

BETWEEN:

JOSEPH LIMPU.....1ST APPLICANT

NEVER MILLION.....2ND APPLICANT

AND

THE REPUBLICRESPONDENT

CORAM: HONOURABLE JUSTICE M L KAMWAMBE

Mr Kamkwasi of Counsel for the Applicants

J Ngwale – Official Interpreter

RULING

Kamwambe, J

This is an application for bail by the Applicants in line with sections 118 and 42 (2) of the Criminal Procedure and Evidence Code and the Constitution of Malawi respectively. Both the Applicants and State filed affidavits in support and in opposition accordingly. A bail decision is made on affidavit evidence which has not been tested through cross examination as in this case and hence where such evidence is divergent it becomes a question of who is closer to telling the truth.

It is now established procedure that the onus to demonstrate that bail should not be granted in the interest of Justice is the State. The Applicants need not show special circumstances to deserve release on bail.

The Applicants face a charge of murder. They are alleged to have attacked a grocery in Chikwawa with a gun on the night of the 14th May, 2006. In the course of the attack they shot at the owner of the grocery and the son. The father was rushed to hospital while the son died on the spot. Around 4.00 a.m. on the 15th May, 2006 police arrested the applicants, and they recovered a gun at the house of the 1st Applicant. But the 1st Applicant refutes that it was a gun but a magazine and he states further that he did not even know what it was as it was given to him by one Desha (now in police custody) when the said Desha was teaching him how to ride a motor-bike which run out of fuel. He states that before Desha went to refuel, he produced from his pocket the device which he left with the 1st Applicant to hold and wait for him. But Desha never turned up and the 1st Applicant left for his house with the rifle magazine. I note that there is no explanation why else Desha could have left the magazine with the 1st Applicant which was safely kept in his pocket. I assume this was on the day of the 14th May 2006.

The State says that the Applicants were brought before the court to be informed of their charges of murder and armed robbery, and the reasons for their further incarceration. It also says that there is overwhelming evidence implicating the Applicants. In my view it is more probable that the Applicants are not connected with the offences they are alleged to have committed. It is not enough just to say that there is overwhelming evidence implicating the Applicants. Possession of a magazine in itself is not enough without connecting it to the gun which is in police hands. In line with section 2 of Part II of the Bail (guidelines) Act No. 8 of 2000 I postpone my judgment to allow the State to adduce further evidence or further information within 27 days of this ruling, otherwise bail shall be granted if it fails to comply. It is so decided.

Made in Chambers this 2nd day of March, 2007.

M L Kamwambe

JUDGE