



IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

MISCELLANEOUS CRIMINAL APPLICATION NO. 150 OF 2008

LOIDI SODA

VERSUS

THE REPUBLIC

CORAM: THE HONOURABLE JUSTICE E. B. TWEA

Miss S. Mapemba, Counsel for the State

Mr Chiwoni, Representing the Accused

Mrs S. P. Moyo – Official Interpreter

R U L I N G

Twea, J

The applicant applied for bail. His application was supported by an affidavit under the hand of Mr Chiwoni of Counsel on his behalf. The State filed an affidavit in opposition.

I had the benefit of reading the affidavits and listening to the submissions of Counsel.

I noted that the it was deponed, on behalf of the applicant, that he was not aware of the circumstances leading to the alleged murder. Further, that he did not know who was killed. It was averred, on his behalf, that Police illegally searched his house and found firearms and ammunitions which he believed were planted on him by his rivals in business.

It was deponed, on behalf of the State, that the applicant was involved in an aggravated robbery involving use of firearms. The victim of the robbery

was shot eight times and died on the spot. The affidavit for the State averred that the firearm was discharged by the applicant.

The affidavit of the State was not challenged in any material particular, save to allege that the State should have mentioned that there was an illegal search which yielded firearms and led to the conviction of the applicant. Further the State was criticised for making sweeping statements and for not producing the statements recorded from the witness. The applicant cited the case of *Dr Cassim Chilumpha Vs Rep Misc Crim. Application 228 of 2006*.

I have considered the affidavits and the submissions.

To begin with, it is important to bear in mind that an argued bail application is not a trial. There is no requirement that there should be formal evidence given: *Mansfield Justices, ex parte Sharkey [1985] QB 613*. The court is allowed to rely on second hand evidence relayed to Police officers or State Counsel, or by the applicant, for that matter: See *Re Moles [1981] Crim. LR 170*. The court need not be satisfied that the applicant will abscond or not. It is sufficient that the grounds raise a real likelihood of the applicant absconding or not. The grounds on which bail is contested must be viewed objectively. To require the court to view the witnesses statements before exercising its discretion, is raising the onus too high, and may amount pre – trial of issues.

In the present case, as I had said earlier, the affidavit of the State was not challenged. I find that it is not disputed that the applicant is an alien. Although he is married to two Malawian women, he does not have real community, as is shown by his neglect of the wives and children. There was use of firearms alleged which resulted in fatality. It is not disputed that the firearms were recovered at the house of the applicant. In view of all this, I do not find that it would be on the interest of justice to release the applicant on bail. Bail is therefore denied. The applicant will be remanded in custody.

Pronounced in Chambers this 1st day of July 2008 at Blantyre.

E. B. Twea
JUDGE