



IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
MISC CRIMINAL APPLICATION NO 195 OF 2008

BETWEEN:

STEVEN KAPATUKA1ST APPLICANT

-and-

ENOCK SOLIJALA 2ND APPLICANT

AND

THE REPUBLIC RESPONDENT

CORAM: Hon. Justice M.L. Kamwambe
Mr. Supedi of counsel for the State
Mr. Mwangwela of counsel for the Applicants
Mr Edith Malani, Official Interpreter

RULING

Kamwambe J

The Applicants are seeking to be granted bail after being arrested on or about the 22nd and 23rd August 2008 respectively on suspicion that they were involved in an armed robbery that killed a person in Limbe. There is an affidavit in support sworn by counsel Mwangwela, and a supplementary affidavit too.

The State has filed an affidavit in opposition and supplementary one as well. We learn that well wishers tipped the police about the Applicant's involvement in the crime. The Applicants colleague a Mr Jakame Masache who was arrested under similar circumstances was granted bail about two weeks ago. The 1st Applicant has a brother or relation at Limbe Police station called Detective Inspector Kapatuka whose official gun is connected to the robbery. It is said investigations in respect of the 1st Applicant are underway.

In its supplementary affidavit the state depones that during an identification parade at Chilomoni on 5th and 6th September, 2008 the suspects were identified by the complaints. The state depones further that in recent arrests in armed robberies it has been revealed that the Applicants are involved in other robberies.

At this stage the Applicants are to be deemed to be innocent until proven guilty. Otherwise they are mere suspects. The crime reveals two serious offences of robbery and murder. This Court would not be wrong to pause a bit and reflect seriously on whether to grant bail. Of course it is now settled practice that the onus is on the State to satisfy this Court why it is in the interest of justice to further incarcerate the Applicants. I should emphasise that it is not enough just to say that there is overwhelming evidence against the Applicants. Such evidence to indicate that it is likely that the Applicants were involved in the crime should be before the court to the court's satisfaction. At this stage such affidavit evidence is just for the purpose of indication that the arrested persons are the relevant suspects that committed the crime. Some link between the crime and the offenders or suspects must be established. If there is no link, courts should not be blamed for releasing suspects on bail.

I am satisfied that the Applicants were the people involved in the crime since they were identified by complainants, presumably Western Union workers. These offences of

robbery and murder being serious ones in nature and that they would be followed by a long term of incarceration if the Applicants were convicted, would make the Applicants abscond bail (see s4 (a) of Act No. 8 of 2000 Bail (Guidelines.) I should also advise the state to hasten investigations so that at least for the robbery offence a speedy trial is conducted.

This is not a case in which one can readily grant bail, I thus deny to grant the application for bail.

Made in Chambers this 22nd day of September, 2008 at Chichiri, Blantyre.

M.L. Kamwambe
JUDGE