

**IN THE HIGH COURT OF MALAWI
LILONGWE DISTRICT REGISTRY
MISC. APPEAL CASE NO. 52 OF 2008**

BETWEEN

**PARTRICK MAPEMBA 1ST APPLICANT
TREVOR PHIRI 2ND APPLICANT**

AND

THE REPUBLIC RESPONDENT

CORAM : CHOMBO, J.
Maulidi, Counsel for the Applicant
Wadi, Counsel for the Respondent
Kafotokoza, Court Interpreter

R U L I N G

This is an appeal by the applicants on the condition of bail. The file is before Senior Resident Magistrate who after an application for bail was made by the applicants granted bail on condition that each applicant paid K150,000 cash and that each applicant produced one surety to be bonded in the sum of K2 million. This was after the bail conditions had been reviewed by the same court that had initially ordered that each applicant pays K2 million into court. The applicants submit that the reviewed sums of K150,000

cash are exorbitant and the bail bond of K2 million for each surety is scarring for the would be sureties.

The application is opposed by the State on the grounds that the conditions as reviewed, taking into consideration all the facts before us are not harsh and exorbitant. It was submitted by the State that the two applicants are on record as directors of the purported company that was transacting in the produce that has resulted in their arrest.

They accordingly have the produce or its value thereof, in their possession. It was the State's submission that the conditions for the two required sureties cannot be said to be scarring when the sureties are not being asked to pay any money into court but merely to make an undertaking that they will ensure that the two applicants will appear before court when so required. The sums of K2 million are only payable in the event that the two applicants decide, for one reason or another, to fail to appear before court.

I am grateful for the case authorities provided by both parties in their arguments.

The lower court, after imposing the initial conditions of cash payment of K2 million each, reviewed the same downwards to K150,000, thus reviewing it downwards by more than K1.5 million. After this reduction the applicants still hold that the sums of money charged amount to denial of bail. I have looked at the case authority provided before me and find that there is no one uniform way of laying down the conditions of bail. Each case is considered on its own merits.

And even if the court was to be guided by the High Court cases which this court does not have to consider in making its determination, there are variations on the bail conditions. In considering whether the conditions are prohibitive, I considered the facts on file. Firstly, the lower court did review the amount to be paid substantially. Secondly, as noted by the lower court, It has been admitted by the applicants that they are still keeping a substantial value of the produce collected of K150,000 and above have been known to be ordered by various Courts after taking into consideration particular circumstances of each case some of which include, K500,000 cash, in *Rep v Mvula* and *Kalisenje case of Chilumpha & Others v the Rep* it was

K250,000 cash, case No. 228 of 2006. Bail of K150,000 therefore is not way out of the way.

On the issue of sureties being bonded in the sum of K2 million each, I want to agree with the State that the sureties are not being asked to pay money but only being asked not to give assurance to court that the applicants have no intentions of absconding whilst on bail the sureties and the applicants have nothing to fear about forfeiting the monies on bond. In the circumstances, is it justifiable or necessary to vary the conditions for the sureties? In my view I do not think so. In my considered opinion it is not just for the sake of changing the conditions but one must also consider the reasonableness of what the court is being asked to review. The applicants claim that because the offence in question is only a misdemeanor then there is no need to set such stiff conditions. In my view I do not think it is so much what offence has been committed but the rationale is whether, with conditions set, the accused person would attend court. But the highest consideration is that of treating each case on its own merit. I must therefore, with these observations, dismiss the application.

MADE in Chambers this 23rd day of May, 2008.

E.J. Chombo
J U D G E