



The Republic of Malawi

**IN THE HIGH COURT OF MALAWI
LILONGWE DISTRICT REGISTRY
MISCELLANEOUS CRIMINAL APPEAL NO. 41 OF 2018**

BETWEEN

TAFATATHA SHUMBA APPELLANT

-VS-

THE REPUBLIC RESPONDENT

CORAM : LADY. JUSTICE I.C. KAMANGA

: Chibwana, Applicant's Counsel
: Respondent's Counsel absent
: Khonje, Court Interpreter

RULING

The applicant is Tafatatha Shumba. He moved the court seeking bail. He has been in custody since 9th January 2018 on suspicion that he killed another. The circumstances of his arrest are indicated in his affidavit. He states that on dates prior to 9th January 2009 he had intended to buy a cell phone from his brother – in-law, Gosi Nyundo. He used the cell phone for some time and thereafter returned it to his brother-in-law as he had failed to raise money for payment of the cellphone. The people that he contacted on the cellphone included his employer's son, Ernest Zimba. On 9th January 2018, Ernest Zimba led Police

officers to the applicant's home on account of the applicant calling Ernest Zimba on the cell phone and tracing the cellphone number for other activities. The applicant explained to the police officers that the cellphone belonged to his brother-in-law. He led the Police officers to the brother –in-law who arrested the brother-in-law. The brother-in-law has at this time sold the cellphone to a Reverend at Kang'oma, Lilongwe. The applicant learnt from the Police that the true owner of the cellphone was killed. The prime suspect is Gosi Nyundo the brother-in-law.

The applicant seeks to be released on bail as he sees no good reason for him to be held on remand. He has been informed by his counsel that homicide matters usually take a long time to commence. And the interest of justice requires that he be released on bail.

DETERMINATION

As the applicant herein was arrested on 9th January 2018, his pre-trial custody time expired on 9th April 2018. Could the State continue detaining the applicant herein. Going through the applicant's affidavit, this court notes that the applicant states that Gosi Nyundo, his brother- in-law is the prime suspect. The applicant, however, does not indicate whether the real owner of the cell phone was killed during the time that the cellphone was with Gosi Nyundo.

It is possible in the circumstances as the applicant equally accessed this cellphone that he could have been involved in the murder. If he was, it becomes highly

probable that he could be convicted as an accessory. Under the Bail Guidelines Act, the probability to conviction reduces a person's right bail if the offence charged is serious in nature. Murder is a serious offence. Where, if the applicant was to become a co-accused who is likely to face conviction, the likelihood of absconding bail becomes high. Hence the circumstances of the matter at hand incline this court to decline applicant to release him on bail.

It is the order of this court that the applicant:

- Be brought before court to be told of reasons for his continued detention and for him to be committed to the High Court for trial within forty-five days of this order.
- The State should serve on the applicant and his counsel, documents and witnesses pertaining to the trial of the applicant within ninety days of this order.
- The matter is listed for hearing in the next session.

Made in Chambers at Lilongwe Registry this ----- day of June 2018.

I.C. Kamanga (Mrs)
JUDGE