



**IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
CRIMINAL DIVISION
CRIMINAL CASE NO. 49 OF 2012**

MURALD PHILLIPS

V

THE REPUBLIC

CORAM: Hon Justice M L Kamwambe

Chisanga of counsel for the State

Chipembere of counsel for the Appellant

Chitsulo Chimang'anga...Official Interpreter

RULING

Kamwambe J

This homicide matter was seised by my brother judge, Justice Mbvundula, up to the stage of delivering judgment and hearing an oral application for bail pending appeal. The judge is head in the Revenue Division. He requested the Criminal Division to take over the case now after conviction and for other personal reasons which I appreciated. As head of the Criminal division, I obliged and I ordered the Assistant Registrar to allocate the file to a judge electronically as modern practice requires, to ensure impartiality. Eventually on 30th July, 2018 the file was allocated to me.

The Appellant Murald Phillips was convicted of murder contrary to section 209 of the Penal Code on 13th day of June, 2018. Upon conviction, counsel Chipembere acting for the convict, now Appellant, alerted the court that he had

an application for bail pending appeal under section 355 (1) of the Criminal Procedure and Evidence Code to make. This was resisted by counsel Chisanga acting for the State on the ground that the defence should bring to the attention of the court grounds on which they intend to proceed on appeal, so that if the presiding judge finds the grounds valid and not vexatious, or that there is serious irregularity in the conduct of the matter or trial, the judge may consider granting bail pending appeal. In response counsel Chipembere said that the appeal is based on the issue of identification, believing that the evidence of PW 2 and PW 6 was not adequate to ground a conviction. He was alive to the fact that the court has warned itself that the court can still convict where there is no identification parade. The trial judge then reserved ruling on the application and he further ordered that the order revoking bail (since convict was on bail during trial) was to take effect. Finally the judge ordered that submissions on sentence shall be filed within 14 days.

On reading the file I have observed that counsel for the Appellant has to date not filed submissions on sentence over three months which is a long period. If they filed any at all, I have not seen it on record. In my view, I am entitled to proceed with writing my judgment without submissions from one party or both as we have always done in the past when the period for submitting submissions has long expired.

I have also observed the sluggish and impromptu manner of applying for this nature of bail which is different from bail pending trial (first instant bail) where the accused person is presumed to be innocent. When it comes to applying for bail pending appeal, it becomes much more serious business which cannot be made flippantly and orally. The State needs to be given notice of the same so that they respond meaningfully. This is not possible if ambushed. In any case, the application was wanting in that reasons or grounds for the application were not fully canvassed by the Applicant. How can the court consider a matter not even half baked? For instance, there were no skeleton arguments for the court to consider. The case of **Raphael Kasambara v Rep** was mentioned by counsel in passing with no full citations being made and without stating its relevance. At best, I can say that the Appellant had merely shown his intention to apply for bail pending the hearing of appeal and the court is still waiting for the substantive application. Since the application is impromptu, the court is not

even sure whether or not to consider also stay of any sentence or order pronounced pending the hearing of the appeal under section 355 (1). Of course I am in the course of passing sentence in a few days to come, but there is an order of the court respecting the bail that was revoked. Should I stay this order? It is not clear from the oral application since there is no mention of it.

I find that the application should be pursued with all seriousness it deserves and the usual practice should be followed. Whenever there is intention to appeal and one intends to apply for bail pending the hearing of the appeal, practice requires that the written bail application be accompanied by a petition of appeal or the actual appeal and grounds thereof that are filed in the Malawi Supreme Court of Appeal to demonstrate that the appellant is really desirous and ready to prosecute the appeal. This prevents one obtaining the relief of bail in the High Court and never proceeding with the appeal in the Supreme Court.

In short, the application for bail pending appeal is wanting and therefore unfit and premature for consideration by this court.

Pronounced in open court this 4th day of October, 2018 at Chichiri, Blantyre.


M L Kamwambe
JUDGE