



THE REPUBLIC OF MALAWI

IN THE HIGH COURT OF MALAWI

**LILONGWE DISTRICT REGISTRY
MISCELLANEOUS CRIMINAL CASE NO. 22 OF 2018**

BETWEEN

KAWAWA MAKIYI ST APPLICANT

PAULO JAKISOTI 2ND APPLICANT

AKIM CHIGAWO 3RD APPLICANT

CHIME JOZEL 4TH APPLICANT

-VS-

THE REPUBLIC DEFENDANT

CORAM : LADY JUSTICE I.C. KAMANGA
: Messrs Joel Matunga - - - Senior State Advocate
: Madam Ndingo - - - Senior State Advocate
: Namasala, Counsel for the Applicant
: Mrs. Ng'ambi, Court Interpreter

RULING

This is an application for the release of the applicant from detention pending the hearing of the substantive action. The application is made under section 42(2) (e)

of the Constitution as read with section 118 of the Criminal Procedure & Evidence Code.

The essence of the applicant is that the applicants were arrested in the period between 17th October 2017 and 20th October 2017 by Kanyerere Police Unit in Lilongwe on allegation of murder. They have been in custody ever since. They have never been brought before a court of law.

In discussing the particulars of the alleged offence, the applicants indicated that an unknown person was murdered by an angry mob on or about the 17th of October 2017 and by throwing him into Likuni river after he was allegedly caught stealing goats in Fundo Village. The applicants indicate that other than the above details, they reserve their right to remain silent at this stage and maintain their innocence.

Senior State Advocate Matunga responded to the applicant. He indicated that the State was seeking that the applicants continue to be detained until determination of the substantive matter. He produced a deposition in which he indicated that he had talked to the Deputy Senior Criminal Investigations Officer, Munthali of Lilongwe Police on the matter. And he was informed that the applicants were arrested for having caused the death of the deceased with malice aforethought by beating him up, tying him with ropes and throwing him into Likuni river. The deceased, before his demise was passing through the applicant's Village with three goats. The applicants questioned him about the goats. The person began to flee, leaving the goats behind. The applicants apprehended him, beat him up, tied him with ropes and threw him in the river, which led to his death. The people of the village were shocked with the applicant's violence against the deceased when the applicants had not ascertained that the deceased had stolen the goats. Hence they reported the matter to the Police. It was the State's position that the villagers were relieved to see the applicants arrested as the

applicants are of violent character and the detention has provided the village with a sense of peace and security.

Applicant's counsel objected to the information as presented in the affidavit and observed that it was evidential in nature and the Senior State Advocate could not swear to such. Applicant's counsel also indicated that it was clear that the deceased had suffered and was a victim of mob justice and that the Police merely picked the applicants as suspects.

Determination

It is clear that from October 2017 to this period, the pre-trial custody time limit has expired. The State cannot seek to keep the applicants in custody when they have not been charged or tried for any offence.

The affidavit of State Counsel herein demonstrates that the State has gathered the requisite information to wit if it can bring the applicants before court for trial. It is therefore hereby ordered that:

- Applicants' be brought before the Chief Resident Magistrate Court to be informed of the detention herein and for summary committal proceedings.
- The State to prepare their documents and list of witnesses and present the same to the applicants and applicant's counsel by the 13th of April 2018.

• This matter is set down for hearing from 15th – 18th May 2018 before
this court.

Applicants shall continue to be in custody until 18th May 2018 when the court
shall determine their matter.

PRONOUNCED in court of At Lilongwe Registry.

I.C. Kamanga
JUDGE