



THE REPUBLIC OF MALAWI  
IN THE HIGH COURT OF MALAWI  
MZUZU DISTRICT REGISTRY  
MISCELLANEOUS CRIMINAL APPLICATION NO 57 of 2017  
Bail Re-Application

BETWEEN

Rabson Milanzi..... Applicant

-and-

The Republic ..... Respondent

Coram:

**The Honourable Justice D.A. DeGabriele**

Mr W. Nkosi

for the State

Mr. Mdazizira

for the applicant

Ms. Munthali

Official Interpreter

Mrs Chirwa

Court Reporter

**DeGabriele, J**

**RULING**

This matter comes for a bail re-application pursuant to section 12 of the Bail Guidelines Act, section 118 of the Criminal Procedure and Evidence code and section 42 (2)(e) of the Constitution of the Republic of Malawi. The applicant filed an affidavit in support of the application and the State filed an affidavit in opposition.

The applicant who hails from Munyola Village, T/A Mkanda in Mulanje District was arrested on 1<sup>st</sup> January 2017 for allegedly causing death through the selling of toxic beer. His applied for bail before Justice D. Kamanga and the application was denied on 6<sup>th</sup> June 2017 on condition that pretrial custody limitations under section 161(G) of the Criminal Procedure and Evidence Code had not been exhausted.

The State was directed that all necessary procedural steps ought to be finalised by 29<sup>th</sup> September 2017 to ensure that the homicide trial commences. It was

further ordered that the matter be set for trial in the Michaelmas Sitting of 2017. The applicant contends that none of these directions have been fulfilled and the pre-trial custody period has expired and the State has not applied for an extension.

The State has responded that bail should be denied as the State is having problems in prosecuting homicide suspects who are on bail, and the State is failing to trace the suspects and the suspects are negatively influencing the witnesses. The State prays that the matter be set for trial.

Section 42(2)(e) of the Constitution of the Republic of Malawi provides that;

*“(2) Every person arrested for, or accused of, the alleged commission of an offence shall, in addition to the rights which he or she has as a detained person, have the right –*

*(e) to be released from detention, with or without bail unless the interest of justice require otherwise”*

The right to bail is not an absolute right but has to be granted subject to the interest of justice, *see also Section 1 of Part II of the Bail (Guidelines) Act*, and the case of *Fadweck Mvahe v The Republic MSCA Criminal Appeal No. 25 of 2005*. The applicant can make several applications but as long as the interests of justice are not satisfied, bail cannot be granted.

The arguments of the State herein are not acceptable. There were clear directions given by the Court which ought to have been observed and implemented. Further, I agree with Counsel for the Applicant that the State has not stated whether or not the matter is now ready for trial, and if so ready, when the matter can be brought to court for trial. It is unjust to lump all murder suspects as persons who will abscond bail, fail to attend trial and interfere with witnesses without providing clear evidence of the same. In exercising its discretion, the court must address its mind to the peculiar facts of each case and must examine any evidence that may lead to the granting or denial of granting bail. The State has not outlined any such evidence in this case.

The issue raised by the State that it is difficult to prosecute homicide suspects because most of them cannot be traced or do not attend court hearings should not be the reason to reject the granting of bail universally. The reason why

sureties are identified is to ensure that they can compel and guarantee the presence of the suspect. If he or she fails to fulfil the conditions of bail, the surety should be held accountable.

Having heard submissions made in court and having read the affidavits as filed, I find that it is in the interest of justice that the applicant be granted bail on the following conditions:


1. The applicants must each pay MK75,000.00 cash into Court;
2. The applicants must each have two honest and reliable sureties with integrity, bonded at MK100,000.00 each, not cash;
3. The applicants must each report at the nearest police once every two weeks, on Mondays before 12 noon;
4. The applicants should not leave their respective villages without taking leave of the Officer in Charge of the said nearest police station where they will be reporting;
5. The applicants must surrender any travel documents to the High Court;
6. The examination of sureties will be done before the Registrar.

I further direct and order that

- a. The State and the investigators must conclude all necessary procedures for the trial to commence and these include; filing and serving disclosures and the charge sheet, observation of and compliance with the provisions under Chapters VIII or IX of the Criminal Procedure and Evidence Code
- b. The matter be set down for trial in the Richard Banda Sitting of 2018.

The applicant is at liberty to make an application to have the matter discharged under the law if the State has failed to fulfil the conditions outlined above.

**Made in Chambers this 7<sup>th</sup> day of February 2018**

  
D.A. DEGABRIELE  
JUDGE