



THE REPUBLIC OF MALAWI  
IN THE HIGH COURT OF MALAWI  
MZUZU DISTRICT REGISTRY  
MISCELLANEOUS CRIMINAL APPLICATION NO 05 of 2018  
Bail Application

BETWEEN

Jabilu Maliki..... Applicant

-and-

The Republic ..... Respondent

Coram:

The Honourable Justice D.A. DeGabriele

Mr D. Shaibu

for the State

Mr. J. Duke

for the applicant

Ms. Munthali

Court Clerk

Mrs Chirwa

Court Reporter

*DeGabriele, J*

**RULING**

This matter comes for a bail 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 Mtanganika Village, T/A Chikulamayembe in Rumphi District was arrested on 31<sup>st</sup> January 2010 for allegedly causing the death of his 7-year-old daughter Linda Jabilu. He has been in custody since then.

The State does not object to the granting of bail, bearing in mind that the Applicant has been in custody for a long time and the offence disclosed in

his application is manslaughter. However, the State is seeking that the matter should be set down for trial.

While the Applicant is entitled to be released on bail, the right to be released on bail is not an absolute right but has to be granted subject to the interest of justice in accordance to Section 42(2)(e) of the Constitution of the Republic of Malawi and Section 1 of Part II of the Bail (Guidelines) Act, and the case of *Fadweck Mvaha v The Republic MSCA Criminal Appeal No. 25 of 2005*.

The applicant herein was arrested on 31<sup>st</sup> January 2010. According to section 161(G) of the Criminal Procedure and Evidence Code the pre-trial custody limit of 90 days has been exhausted and the State has not made any application to extend that time limit.

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 applicant must pay MK50,000.00 cash into Court;
2. The applicant must have two honest and reliable sureties with integrity, bonded at MK100,000.00 each, not cash;
3. The applicant must report at the nearest police once every two weeks, on Mondays before 12 noon;
4. The applicant should not leave his village without taking leave of the Officer in Charge of the said nearest police station where he will be reporting;
5. The applicant must surrender any travel documents to the High Court;
6. The examination of sureties will be done before the Registrar.

The State has submitted that the matter should be set down for trial. Therefore, 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; finalising the investigations, 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 must 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 26<sup>th</sup> day of February 2018**

  
**D.A. DECABRIELE**  
**JUDGE**