



THE REPUBLIC OF MALAWI
IN THE HIGH COURT OF MALAWI
MZUZU DISTRICT REGISTRY
MISCELLANEOUS CRIMINAL APPLICATION NO 04 of 2018
Bail Re-Application

BETWEEN

Hastings Ng'oma and 3 Others..... Applicants

-and-

The Republic Respondent

Coram:

The Honourable Justice D.A. DeGabriele

Mr D. Shaibu

for the State

Mr. J. Kadzipatike

for the applicants

Ms. Munthali

Official Interpreter

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 applicants who hail from Kasanga Nyirongo Village, T/A M'mbelwa in Mzimba District were arrested on 3rd January 2018 for allegedly murdering Steven Chisimba. The applicants are applying for bail because they have been in custody since that time and have not been brought before a court of law.

The State is opposing the application for bail on the grounds that the applicants' security may be at risk if they are release too early as the relatives

of the deceased are still not happy. The State further argues that it 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 interests of justice require otherwise"

The right to bail is not an absolute right but has to be granted subject to the interest of justice and in the discretion of the court, 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 set forth by the State in support of their opposition to granting bail herein are not acceptable. 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. Each case of bail application must be treated on its own merit.

This Court has looked at the date of arrest and conclude that the pre-trial custody time limit as set out under section 161(G) of the Criminal Procedure and Evidence Code has not been exhausted and the Court cannot grant the Applicants bail on the ground that they have overstayed in custody.

Having heard submissions made in court and having read the affidavits as filed, this Court makes the following orders;

- a. The Applicants must be brought before a court of law for committal proceedings within 14 days

- b. 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
- c. The matter be set down for trial in the Richard Banda Sitting of 2018.

The Applicants are at liberty to make a fresh application for bail if the State has failed to fulfil the conditions outlined above.

Made in Chambers this 26th day of February 2018


D.A. DEGABRIELE
JUDGE