



IN THE HIGH COURT OF MALAWI
ZOMBA DISTRICT REGISTRY
BAIL APPLICATION NO. 76 OF 2016

IN THE MATTER OF SECTION 42(2)(e) OF THE REPUBLIC OF MALAWI
CONSTITUTION

AND

IN THE MATTER OF A CONSIDERATION OF BAIL UNDER SCHEDULE UNDER
SECTION 118(3) AND PART IV OF THE CRIMINAL PROCEDURE AND
EVIDENCE CODE, CAP 8:01 OF THE LAWS OF MALAWI

AND

IN THE MATTER OF A CONSIDERATION OF BAIL UNDER SCHEDULE PART II
(1)(4) OF THE BAIL GUIDELINES ACT

AND

IN THE MATTER OF A CONSIDERATION OF BAIL UNDER SCHEDULE
SECTION 98 AND 134(2) OF THE CHILD CARE, PROTECTION AND JUSTICE
ACT

GRANT WYSON APPLICANT

AND

THE STATE RESPONDENT

CORAM : Z NTABA, J.
: Mr. P. Chinguwo, Counsel for the Applicant
: Counsel for the Respondent Absent
: Mr. D. Banda, Court Clerk

Ntaba J.

RULING

1.0 THE APPLICATION

- 1.1 The Applicant, Grant Wyson was charged with murder contrary to section 209 of the Penal Code. They were committed to the High Court after being formerly

charged. The Applicant filed an application for bail under section 42(2)(e) of the Constitution as read with section 118(3) and Part IV of the Criminal Procedure and Evidence Code as well as Schedule Part II (1)(4) of the Bail Guidelines Act and section 98 and 134(4) of the Child Care, Protection and Justice Act.

- 1.2 The Applicant is unmarried and aged 21 hailing from Mjojo village under Traditional Authority Mlumbe in Zomba district. Before his arrest, he used to sell second hand clothes in various markets within Zomba and his monthly profit was around of K10000.00. He filed an affidavit as well as skeleton arguments to support his application. He contended that the court should grant him bail because he has been in custody at Mikuyu II Prison since August, 2013 and the State has yet to try him. He stated that the circumstances of the case were that in the second week of August, 2013 he was doing some gardening for Mai Nazimbiri, who is a business lady at Namadidi Trading Centre. On Friday of that week he had gone to garden at 4 am and returned at 8 am and proceed to go for his usual business at Chingale Trading Centre. He returned home at 4 pm until the next day when he went again to the said garden and worked from 4 to 7 am after which he went to Thondwe market for his business and returned home at 5 pm. On Sunday he was informed that his grandmother, commonly referred to as Ayaya, had died in the early morning and he proceeded to the funeral where burial took place on the Monday. After two (2) weeks, police officers from Thondwe Police Station including CID Officer Mkandawire, came to his home around 1 am and arrested him for the murder his grandmother.
- 1.3 He argued that it is not known when the State will try him as he has been in custody for over three (3) years. Further, bail is a constitutional right which should be granted if the interests of justice demand, and he relied on the *locus classicus* case of *Fadweck Mvahe v Rep*, MSCA Crim. Apl. No. 25 of 2005 to buttress this positin. He contended that the said length of time already spent in custody without trial and the lack of certainty as to when trial will take place is prejudicial to his right to a fair trial within a reasonable time. The Applicant stated that he has reliable sureties and has a permanent place of residence in Thondwe. He prayed that there is nothing that is against the interest of granting him bail.
- 1.4 The State did not file an affidavit in response but sent an email to the court and counsel for the Applicant with an undertaking that they would file the necessary documentation on 15th September, 2016. In their communicated documents which were never filed with the court indicated that they were not objecting to bail looking at the time spent in custody.

2.0 ORDER

- 2.1 I have carefully considered the facts and the law and realizing that bail is constitutionally guaranteed to everyone. Cognizant that bail although available to homicide suspects, it is not absolute but contingent on the interest of justice. Notably, in this case the balance of justice lie in favour of granting bail.
- 2.2 This court therefore orders that bail be granted. The Applicant is therefore

bound on the following conditions –

- 2.2.1 he pay a bail bond of a cash sum of K20,000.00 into Court before being released;
 - 2.2.2 he produce two (2) sureties and each surety to be bonded in the sum of K100,000.00 not cash. The said sureties be examined by the Registrar within twenty one (21) days of this order on a date and time to be fixed by her;
 - 2.2.3 he report every Monday to Thondwe Police Station or his nearest police station (which station should be communicated to the court) except if required to report to Court on the same day;
 - 2.2.4 surrender any travel documents to the said Police Station and not to leave the country without the written authority of the officer-in-charge of the Police Station;
 - 2.2.5 seek written permission from the officer-in-charge of the said Police Station if they wants to travel outside Thondwe;
 - 2.2.6 be bound to keep the peace and refrain from tampering with state witnesses; and
 - 2.2.7 not commit any crime during the subsistence of his bail.
- 5.3 The State is further ordered to do all necessary issues for pretrial procedures including committal procedures and plea taking will take place at the High Court in Zomba on 17th November, 2016 at 09.00 hours

I order accordingly.

Made in chambers this 22nd day of September, 2016 .



Z.J.V. Ntaba
Judge