

**THE REPUBLIC OF MALAWI
IN THE HIGH COURT OF MALAWI
MZUZU DISTRICT REGISTRY
MISCELLANEOUS CRIMINAL APPLICATION NO 92 of 2017
Bail Application**

BETWEEN

Given Ndhlovu..... Applicant

-and-

The Republic Respondent

Coram:

The Honourable Justice D.A. DeGabriele

Mr W. Nkosi

for the State

Mr. C. Duke

for the applicant

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 applicant who hails from Munyongani Village, T/A Chikulamayembe in Rumphi District was arrested on 16th September 2017 for allegedly causing the death of a Mr. Ng'ambi. 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.

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 Mvahe v The Republic MSCA Criminal Appeal No. 25 of 2005*.

The applicant herein was arrested on 16th September 2017. 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. The arguments 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.

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.

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 MK100,000.00 cash into Court;


2. The applicants must each have two honest and reliable sureties with integrity, bonded at MK150,000.00 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.

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 7th day of February 2018


D.A. DEGABRIELE
JUDGE