



**IN THE REPUBLIC OF MALAWI
IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY: CRIMINAL DIVISION
Homicide Case No. 152 of 2020
Bail Application**

Enock Harrison Chisale

v

The Republic

Coram

Honourable Justice DeGabriele

Ms. B. Kumwenda

Ms. Chikopa

Mr. Amosi

for the State

for the Applicant

Court Clerk

DeGabriele, J

RULING

1. This matter comes for a bail application pursuant to section 42 (2)(e) of the Constitution of the Republic of Malawi and section 118 of the Criminal Procedure and Evidence Code. The Applicant has made his application through his legal counsel who swore an affidavit in support of the application, and also files skeleton arguments.
2. The Applicant who is 45 years old and comes from Njobvu village Traditional Authority Changata in Thyolo District was arrested on 18 July 2020 for allegedly causing the death of Patrick Chitengu. The deceased was the son in law of the

Applicant and he had assaulted the Applicant's children. When the Applicant went to challenge the deceased, he found him drunk, weak and with blood on his body due to the beatings he had received at the market. The deceased was taken to the police station, was arrested and then taken to hospital later where he died the next day. The postmortem report showed death was due to head injuries.

3. The Applicant is applying to be released on bail and undertaken to honour bail conditions. The Applicant has his family and roots within the jurisdiction. He also cooperated with the police investigators at the time of his arrest.
4. The State responded and filed an affidavit, stating that though the applicant had been arrested for the offence on murder, the State was not objecting to his being granted bail on conditions set by the Court. The State does not force that the Applicant would jeopardise investigations in the matter.
5. 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 Mwahe 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.

6. In this case, the Applicant was arrested on 18 July 2020 and the State does not see him as a flight risk or a potential risk as regards investigations. To this end, this Court is of the view that the interest of justice tilts in favour of the Applicant being granted bail on the following conditions:

1. The Applicant must pay MK50,000.00 **CASH** into Court and a copy of his national identification card must be placed on the court file;
2. The Applicant must produce and have two honest and reliable sureties with integrity, who are related to him by blood or marriage, bonded at MK100,000.00 each, **NOT CASH**, and a copy of the national identification card of each surety must be placed on the court file;

3. That the suitability of the said sureties will be examined by the Registrar of this Court;
4. The Applicant must report to the Officer-in-charge of the nearest police station within 7 days of their being discharged and thereafter once every fortnight, on Mondays before 12 noon.
5. The Applicant should not leave the District and jurisdiction without informing the Officer-in-Charge of the said nearest police station as aforementioned, and without informing their sureties of his destination and the duration of his stay;
6. The Applicant should surrender any travel documents that he may have to the Officer-in-Charge of the said nearest police station as aforementioned, or to the High Court;
7. 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 within the 30 days from today.
8. Further, and in the interest of justice, the matter must be set down for plea and directions within 60 days from today.

It is so ordered.

Made in Chambers at PRINCIPAL REGISTRY in Blantyre this 18th day of August 2020


D. A. DEGABRIELE
JUDGE