



**IN THE REPUBLIC OF MALAWI
IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY: CRIMINAL DIVISION
Homicide Case No. 153 of 2020
Bail Application**

Christopher Gusto.....1st Applicant
Frazer Ndekha.....2nd Applicant
Dickson Kaitano.....3rd Applicant
Justin Gopoto.....4th Applicant

v
The Republic

Coram

Honourable Justice DeGabriele

Ms. B. Kumwenda

Ms. Chirwa

Mr. Amosi

for the State

for the Applicant

Court Clerk

DeGabriele, J

RULING

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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 4 Applicants made their application through their legal counsel who swore an affidavit in support of the application, and also files skeleton arguments.

2. The Applicants were employed as guards by Conforzi Estate Limited in Thyolo District. Christopher Gusto comes from Supelo village, Traditional Authority Chimaliro in Thyolo District, Frazer Ndekha comes from Kamba village, Traditional Authority Nsabwe in Those District, Dickson Kaitano comes from Mtongolo village, Traditional Authority Malemia in Zomba District, and Justin Gopoto comes from Semu village, Traditional Authority Khwethemule in Thyolo District.
3. The Applicants had been assigned by their employer to go and remove some encroachers on 21 July 2020, and a dispute and assault ensued. It is alleged that the Applicants assaulted on Everson Nahisa who had been armed with a panga, who died on arrival at the hospital due to head injuries. The Applicants are all married and with children and have families and relatives within the jurisdiction. The Applicants will not interfere with any investigations.
4. The State response and filed an affidavit, stating that the Applicants had indeed assaulted on Everson Nahisa who died of head injuries caused by an assault. The State has concluded its investigations and it is not objecting to the Applicants being released on bail pursuant to sections 161(E) and (G) of the Criminal Procedure and Evidence Code.
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 Mvahe v The Republic MSCA Criminal Appeal No. 25 of 2005***. The applicants can make several applications but as long as the interests of justice are not satisfied, bail cannot be granted.
6. In this case, the Applicants were arrested on 21 July 2020. The investigations are already concluded but the State has not stated when trial will commence. This would have been a very good case to have trial begun and concluded within a short period of time. To this end, it is in the interest of justice that bail be granted on the following conditions:

1. The Applicants must each pay MK80,000.00 **CASH** into Court and a copy of their national identification card must be placed on the court file;
2. The Applicants must each produce and have two honest and reliable sureties with integrity, who are related to him by blood or marriage, bonded at MK200,000.00 each, **NOT CASH**, and copies 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 Applicants must each 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. T
5. The Applicants should each 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 their destination and the duration of their stay;
6. The Applicants should each surrender any travel documents that they may have to the Officer-in-Charge of the said nearest police station as aforementioned, or to the High Court;
7. Further, and in the interest of justice, the matter be set down for trial and it is ordered that since the State has already concluded, the State is directed to bring the matter for plea and directions within 60 days from today.

It is so ordered.

Made in Chambers at PRINCIPAL REGISTRY in Blantyre this 14th day of August 2020

