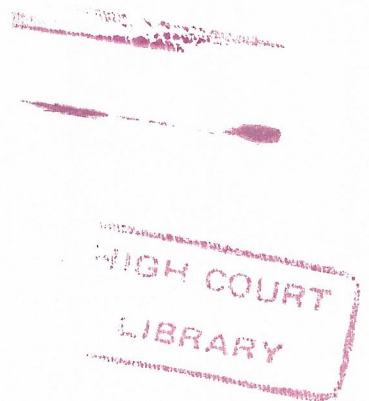




**IN THE REPUBLIC OF MALAWI
IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY: CRIMINAL DIVISION
Homicide Case No. 175 of 2017
Bail Application**



**The Republic
v
Alick Norman
Mike Makoka
Richard Bwanaisa**

Coram:

Honourable Justice DeGabriele

Ms. Kumwenda

Mr. Minjale

Ms Chirwa

Mr. Amosi

for the State

for the 1st and 2nd Applicants

for the 3rd Applicant

Court Clerk

DeGabriele, J

RULING

1. The three (3) Applicants, together with two others were arrested and charged with the offence of murder of having caused the death of Davie Makwinja on 1st May 2014 at Lulanga village, Traditional Authority Mpama in Chiradzulu District. One of the accused persons was Ethel Makwinja, who pleaded guilty to have committed the offence and was convicted on 8 October 2018, and was sentenced on 13 February 2019. The other accused person was Billiat Gadabwali, who is deceased.

2. The first 2 Applicants, Alick Norman and Mike Makoka are being represented by Messrs Kawelo Lawyers and the 3rd Applicant Richard Bwanaisa is being represented by Legal Aid Bureau. They are all applying for an order be released from detention on bail on conditions that the Court may impose, pursuant to section 42 (2)(e) of the Constitution of the Republic of Malawi; section 118 (3) and section 161G of the Criminal Procedure and Evidence Code, and Part II of the Schedule to the Bail (Guidelines) Act. The applications are supported by an affidavits sworn by Sigele Chirwa and Peter Minjale, as well as skeleton arguments filed with the Court. The State has not made any submissions.
3. The Applicants have been in custody since the time of their arrest in April 2014. The grounds for the application are that the State has failed to comply with the orders of the court in the year 2018 that charges be amended/drafted and be filed with the court. Furthermore, the pre trial custody limits as outlined in the law have been exhausted and the State has not applied for extension. To this end, it is not clear when the Applicants could be brought to trial.
4. 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”
5. In accordance to section 42(2)(e) as quoted above, any person accused of any crime has a constitutional right to be released from detention with or without bail, unless the interests of justice require otherwise. However, as has been observed and laid down in case law, the above section does not make the right to be granted bail an absolute right. The courts of law do still exercise informed discretion in whether or not bail can be granted or refused, based on the court being satisfied that the interests of justice would be served, or not served, see ***Phiri and Another v The Republic [2000-2001] ML R369***.
6. The courts are guided by the provisions of section 3 of the Bail (Guidelines) Act and the specifications outlined in Part II of the Schedule to the Bail (Guidelines) Act. In exercising discretion, courts have to weigh whether or not the interest of justice

would be served by the granting or refusal to grant bail. The burden of showing that it would not be in the interests of justice that the accused person be granted bail rests on the State which must give reasons, see ***Fadweck Mvahe v The Republic MSCA Criminal Appeal No. 25 of 2005 (unreported)***. As stated above, the State has not filed any submissions.

7. In this case the record shows that the Court had previously ordered the State to file a charge sheet by the 23rd day of September 2019. Up to date that charge sheet has not been filed. The Applicants submitted that it is not known when the matter can be brought to trial. This Court notes that the pre trial custody limits as set down by section 161F of the Criminal Procedure and Evidence Code have already been exhausted. Further, the State has continued in its non-compliance to draft and file a charge sheet. It is the view of this Court that it is in the interest of justice that the Applicants be granted bail. Furthermore, the Court takes note of the current COVID19 pandemic which has tended to disrupt the operations in the justice system, meaning that it is not known when normal court processes and hearings will resume at full strength.
8. Looking at the circumstances and the submissions of the Applicants, this Court concludes that it is in the interest of justice that the Applicant be granted bail, on the following conditions:
 1. The Applicants must each pay MK180,000.00 **CASH** into Court and a copy of the national identification card for each must be placed on the court file;
 2. The Applicants must each produce 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 his being discharged and thereafter once every fortnight, on Mondays before 12 noon;
 5. Each Applicants should not leave the District and jurisdiction without informing the Officer-in-Charge of the said nearest police station as

aforementioned, and without informing his sureties of his destination and the duration of his stay;

6. Each 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;

The Court further orders that

- a. The State and the investigators must conclude all necessary procedural steps that would ensure that the homicide trial commences in the High Court, including: the filing and serving of disclosures and charge sheet; the compliance with the provisions of Chapters VIII or IX of the Criminal Procedure and Evidence Code.
- b. The matter must be set down for trial within 90 days
- c. If the State fails to so commence the trial, the Court may, on application by the Applicant consider discharging the Applicants.

It is so ordered.

Made in Chambers this 27th day of July 2020


D. A. DEGABRIELE
JUDGE