



**REPUBLIC OF MALAWI
IN THE HIGH COURT OF MALAWI
ZOMBA DISTRICT REGISTRY
MISCELLANEOUS CASE NO. 5 OF 2020
CONSOLIDATED
CRIMINAL APPEAL NO. 6 OF 2020**

SALOME MAGOLA

APPELLANT

AND

THE REPUBLIC

RESPONDENT

**Coram: Honorable Justice Z.J.V. Ntaba,
Mr. K. Mhone, Counsel for the Applicant
Mr. S. Chisanga, Counsel for the State
Ms. C. Nyirenda, Court Clerk and Official Interpreter**

RULING

- 1.1 The Appellant was charged with committing an act intended to cause grievous harm contrary to section 235 of the Penal Code before the Second Grade Magistrate in Ntcheu under Criminal Case No. 572 of 2020. The facts were that the Appellant flew boiling water on her sixteen (14) year old son, SM, which resulted in burns on his back, chest and right side of the ear. The lower court found the Appellant with a case to answer after which, the Appellant brought an application that the matter be withdrawn as the son wanted the matter to be discontinued.
- 1.2 The lower court denied the Appellant bail which was handled on 20th February, 2020. She argued that she is entitled to bail reconsideration under section 42(2) (e) of the Constitution as read with section 118(5) of the Criminal Procedure and Evidence Code. Additionally, she argued that the interest of justice were in favour of her being granted. However, she brought another application before the Court seeking an appeal from the decision of the lower court refusing to allow an application by the Appellant to withdraw the prosecution.

It was her assertion that the prosecution was being conducted to please YONECO and the public as such it was their view that the court's discretion was not exercised judicially.

- 1.3 The State argued that in terms of the bail application, she should be granted bail because the lower court had a permanent home in the village with no travel documents. Further since the State had paraded two (2) witnesses and the State's case is closed, then there will be no interference. They prayed that the Applicant should not be granted bail.
- 1.4 This Court recognizes that bail is a constitutional right however the same is not absolute but must be granted based on the interest of justice as well as the Judge's discretion upon examining all the facts and circumstances of the case. Therefore, in a bail reconsideration, the Court must examine the lower court decision for refusing bail and this Court accordingly reviewed the same. The Court noted that the State in the lower court was worried about interference and intimidation by the Appellant. It would be noted that from the reading of the lower court file, such can be implied as noted by the move of withdrawal by the victim. This Court should state that the Appellant's argument that the prosecution was motivated by public opinion including YONECO was never indicated in the lower court record and such assertion by senior counsel was in this Court's considered opinion was absurd but more so regrettable especially taking into account the seniority of Counsel Mhone. The lower court rightly exercised its discretion when it refused to accept the application for withdraw.
- 1.5 Turning back to the bail application, noting the State's no objection as well as after the examination of the facts herein as well as the law. The Court is of the view that the Appellant shall honour her bail as such since the Bail Guidelines Act, provides that as long as a person is most likely to attend to her/his trial, which apart from the interests of justice is also a principal consideration for granting or not granting bail, then bail should be granted. The Applicant's bail is therefore granted on the following terms -
 - 1.5.1 that she pays a cash bail bond of 300,000.00 before his release;
 - 1.5.2 that she produces two (2) reliable and traceable sureties and each to be bonded for a non-cash sum of K1,000,000.00 and the said sureties to be examined by the Assistant Registrar;
 - 1.5.3 that she reports once every week on Monday to Ntcheu Police Station;
 - 1.5.4 that she surrenders her travel documents before release to the Assistant Registrar;

- 1.5.5 that she provides a copy of her national identification card to the Court and Police.
- 1.5.6 that she seeks permission of Office in Charge to travel outside Ntcheu;
- 1.5.7 that she does not interfere with State witnesses nor temper with evidence; and
- 1.5.8 she be bound to keep the peace or not to commit any offence for the duration of his bail.
- 1.6 This Court further places a restraining order against the Appellant that she cannot come within 100m of the victim, SM which means she should not occupy the same house as him until the conclusion of the matter by the lower court.
- 1.7 This Court orders that the criminal matter shall proceed and therefore the appeal is hereby dismissed.

I order accordingly.

Dated this 28th day of May, 2020 at Zomba.



Z.J.V Ntaba
JUDGE