



REPUBLIC OF MALAWI
IN THE HIGH COURT OF MALAWI
ZOMBA DISTRICT REGISTRY
SITTING AT ZOMBA PRISON

MISCELLANEOUS CASE NO. 27 OF 2022

BETWEEN

FELIX LEKISON 1st APPLICANT
FRANCIS MKWAMBA 2ND APPLICANT

AND

THE REPUBLIC RESPONDENT

*Coram: Honourable Justice Violet Palikena-Chipao
Mr. M. Dallars, of Counsel for the Applicant
Mr. G. Msume, of Counsel for the Respondent
Ms. A. Kazambwe, Official Interpreter and Court Clerk*

RULING ON APPLICATION FOR BAIL PENDING TRIAL

1. The Applicants, Felix Lekison and Francis Mkwamba, are on remand at Zomba Maximum Prison on allegations of murder.
2. The Applicants were arrested by Lizulu police in July, 2020 on the allegations of having caused the death of Geoffrey Witness Kauwa (known as Deno Nsima the Applicant).

3. The brief facts are that deceased was found dead along the stream and the applicants together with other two people were arrested in connection with the murder. The incident happened in July 2020.
4. The State in their response indicated that the facts are sketchy as investigations are still under way but argued that bail may be granted. The state however undertook to hasten the committal process once they have the docket.
5. There is no indication as to when the investigations may be completed and then the file forwarded to the DPP for their action. It therefore does not appear to the court that trial may be commenced soon.
6. The Applicants have been in custody since July, 2020. There is no suggestion that the Applicants may interfere with investigations if released. It has been indicated by the Applicants that one suspect was already released on bail.
7. Every Accused person is entitled to be granted bail unless the interest of justice demands otherwise. In deciding whether or not it is in the interest of justice to grant bail, the Bail Guidelines Act in Section 3 under Part II on Bail by the Court Paragraph 4(a) to (d), lays down the following principles which the court should take into account;
 - (a) the likelihood that the accused, if released on bail, will attempt to evade his or her trial
 - (b) the likelihood that the accused, if he or she were released on bail, will attempt to influence or intimidate witnesses or to conceal or destroy evidence
 - (c) the likelihood that the accused, if he or she were released on bail, will endanger the safety of the community or any particular person or will commit an offence
 - (d) in exceptional circumstances, the likelihood that the release of the accused will disturb the public order or undermine the public peace or security
8. Whilst the burden to show that the interests of justice require further detention lies on the State, the Court may also on its own, notwithstanding any representations to the contrary by the Applicant or the State or both, make its independent finding upon weighing the personal circumstances of the accused Applicant and the 9 interests of Justice. According to Part II Section 9 of the Bail Guidelines Act, "Notwithstanding the fact that the prosecution does not oppose

the granting of bail, the court has the duty to weigh up the personal interests of the accused against the interests of justice.”

9. In the circumstances of the case, the interest of justice tilts in favour of granting bail as such, the court proceeds to grant bail on the following conditions;
- a. Cash bond of K30, 000
 - b. Two sureties bonded in a non-cash sum of K100, 000
 - c. The Applicant and his sureties to produce their national identities
 - d. Applicant is to report for bail at the nearest police station Tuesday every fortnight
 - e. Applicant is to surrender travel documents to the court if any.

10. The State is directed to take all preliminary steps for the trial of the Applicant including committal proceedings and filing of disclosures within 60 days from today. The matter is to come for plea and directions on 12th May, 2022 9am.

It is so ordered.

Pronounced in Chambers this 4th Day of March, 2022.



Violet Palikena-Chipao

JUDGE