



HIGH COURT OF MALAWI
 CRIMINAL REGISTRY
 27 MAY 2022
 P.O. BOX 109
 ZOMBA

REPUBLIC OF MALAWI
 IN THE HIGH COURT OF MALAWI
 ZOMBA DISTRICT REGISTRY

BAIL APPLICATION CAUSE NUMBER 26 OF 2022

BETWEEN

MWAYIWAWO SIMEON APPLICANT

AND

THE REPUBLIC RESPONDENT

*Coram: Honourable Justice Violet Palikena-Chipao
 Dallars, of Counsel for the Applicant
 Mphepo, of Counsel for the Respondent
 Kazambwe (Ms), Official Interpreter and Court Clerk*

RULING ON APPLICATION FOR BAIL PENDING TRIAL

1. The Applicant, Mwayiwawo Simeon, is on remand at Zomba Maximum Prison on allegations of murder. He is alleged to have caused the death of Agness Phiri.
2. The Applicant was among the list of remandees who had been listed for bail considerations during a camp court which was held at Zomba Maximum Prison on 17th February, 2022. In his application for bail, the Applicant stated that he was arrested in 2014 June and that on or about 8 June 2014, he appeared before the magistrate court where he was charged with the present offence. Considering that the Applicant has overstayed in custody with no hope as to when he

would be tried, he prayed to court for bail. The Applicant acknowledged in his application that he stabbed his mother to death. He argued that he did this after he was angered by her conduct.

3. In the affidavit in response whilst confirming that the Applicant caused the death of his mother, the State argued that the Applicant was denied bail in 2016 by Justice Ntaba who opted for speedy trial.
4. Counsel for the Applicant asked that the matter be transferred to Justice Ntaba who was already seized of the matter. The matter was referred to Justice Ntaba but she directed that this court should proceed to deal with the application.
5. In the first application that the Applicant made, the court denied bail and one of the reasons was that the state was ready to prosecute the matter and the court found it in the interest of justice to proceed with the trial of the matter. The court went further to order the State to finalise all pre-trial procedures and that plea taking should take place on 28th July, 2016. The court also held that it would take competency hearing on the date of plea and directed the Legal Aid Bureau to ensure that it gets prepared for the said competency hearing. This order was made on 9th June 2016.
6. After the matter was referred back to this court, Counsel for the Applicant was asked to refile the application in view of the fact that this was not a first application by the Applicant. Counsel complied by filing a fresh application. I did not consider the merits of the application because the application was filed as an ordinary application and not a reapplication which should be based on change of circumstances. Counsel for the Applicant was therefore directed to refile the application.
7. The present application therefore is a reapplication for bail on the basis of change of circumstances. The basis of the application was that the State has failed to prosecute the matter since 2014 and that the State has failed to adhere to orders which the court made in 2016. It was further argued that the Applicant has remained in custody with no indication of when the matter will ever be prosecuted or whether the State has any intention to prosecute the matter. It was therefore argued on behalf of the Applicant that it is in the interest of justice that he be granted bail. Counsel for the Applicant went further to say that in case it may not be safe for the Applicant to go back home where the incident happened, then he would go and stay in Phalombe at his home village
8. On the issue of change of circumstances and the State's failure to comply with the 2016 directions, the State simply said that it is unfortunate that it has taken this long without the matter being prosecuted and that this court should proceed to exercise its discretion to grant bail. When asked whether the State has addressed the court on its failure to comply with the

2016 order of the court, the State simply said that it is unfortunate and Counsel was tongue tied to explain the non-compliance. Counsel argued that he tried to ask his colleagues about the case but got no proper response.

9. After hearing the parties, I proceeded to grant bail on the following conditions but reserved my reasons;
 - a. That the applicant pays a cash bond of K30, 000
 - b. That the Applicant furnishes the court with two sureties bonded in a non-cash sum of K100, 000
 - c. That the Applicant do relocate to Phalombe his home village to ensure his safety
 - d. That one of the two or both sureties should come from Phalombe where he would stay upon release on bail
 - e. Each surety to furnish the court with copies of their national identity cards
 - f. That the applicant be reporting for bail at the nearest police every fortnight on Tuesdays.

10. I now proceed to give reasons for the granting of bail. It is trite that every accused person is entitled to be released on bail unless the interest of justice demands otherwise. It is noted that the Applicant was arrested in 2014 and this year, he will be clocking 8 years since he was arrested. Although in 2016, the State indicated that they were ready for trial, prompting the court to deny bail and order that the matter do proceed to trial, close to 6 years have elapsed without the State taking any step to show its readiness or indeed to comply with the orders that were made by the court in 2016. No disclosures were served on the Defence or filed with the court. The record has no charge sheet to show that the State is ready to take plea. It is not known if the Applicant was already committed for trial. Even as we stand, there is no indication as to whether the State is ready with all the required documentation for pre-trial processes or as to when such documentation may be available. It is not known if at all the State would prosecute the Applicant.

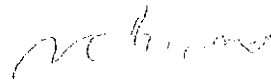
11. When asked as to why the State has not complied with the 2016 order for a period of over five years, all the State could say was that this is unfortunate and that the State is tongue tied to explain the non-compliance. It is unfortunate indeed that the State has taken over 5 years without complying with directions of the court especially considering that one of the reasons for denying bail was that the State was ready for trial. It's now close to 8 years since the Applicant was arrested but there is no hope that he would be tried soon. The period is too long and in view of the uncertainty as to when the Applicant may be prosecuted if he is going to be prosecuted, the court finds that interest of justice weighs in favour of granting bail.

12. The manner in which the State has conducted itself in handling this matter leaves a lot to be desired. The State must attach seriousness to matters of this nature as they involve people's

liberties. The State must also remember that it has the obligation to provide the court with information which would assist the court as it exercises its discretion in determining whether or not the granting of bail is in the interest of justice. Whilst it is the court's discretion whether or not to grant bail, that discretion is not exercised in the vacuum. The court relies on the information that parties provide. The State should therefore take time to provide sufficient information to the court whether in support of or in opposition to an application.

It is so ordered.

Pronounced in Chambers this 27th Day of May, 2022.



Violet Palikena-Chipao

JUDGE