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HIGH COURT OF MALAWI  
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ZOMBA

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

MISCELLANEOUS CASE NO. 58 OF 2022

BETWEEN

SAIDI MALORA

AND

THE REPUBLIC

*Coram:* *Honourable Justice Violet Palikena-Chipao*  
*Mr. Kanyika, of Counsel for the Applicant*  
*Ms. B. Kumwenda, of Counsel for the Respondent*  
*Ms. A. Kazambwe, Official Interpreter and Court Clerk*

**RULING ON APPLICATION FOR BAIL PENDING TRIAL**

The Applicant, Saidi Malora is on remand at Mangochi Prison on allegations of murder. He has asked the court for bail pending his trial.

The Applicant hails from Bakili village, T/A Namkumba, Mangochi District. He is on remand on allegations that he caused the death of Patricia Chinguwo. He was arrested on 17<sup>th</sup> February, 2022 by Mangochi Police. The facts of the case as presented by the Applicant are that on or about 17<sup>th</sup> February 2022, the Applicant had quarrelled with his wife and his wife left the matrimonial home and went to her parents place around Mpinganjira. The Applicant stated that he followed his wife to try and resolve their issues but to no success and he was told to go back. He went further to say that on his way back whilst driving cautiously, at Mpina Roadblock a police officer abruptly attempted to stop him but because he was too close to the roadblock, he inevitably hit her. He further said that he tried to put on brakes but he failed and lost control of the vehicle. The police officer died as a result of the impact and he was arrested. He learnt that the officer is Miss Patricia

Chinguwo. In his oral submissions, Counsel for the Applicant argued that the Applicant did what he did because he was mentally unwell due to domestic violence and that there was no malice.

The version as presented by the State is however different from the Applicants version. The State's version is that the Applicant upon reaching the police road block increased speed thereby hitting the barrier and did not stop and that 15 minutes later, he came again in high speed and hit it again and police officers fled from the road but the Applicant followed the officer and hit her there. The officer was severely wounded and was pronounced dead at hospital. The State went further to say that the Applicant was arrested by members of the community and surrendered to police. The State indicated that investigations are over and that the docket is ready. The State has objected to the application arguing that the Applicant may flee to South Africa once released on bail. In the oral submission, the State argued that the manner in which the accident happened was deplorable and that if granted bail, the Applicant may abscond due to the gravity of the evidence. Since the docket is ready, the State asked for a speedy trial.

In response, Counsel for the Applicant argued that the Applicant is located in Mangochi and has never moved out of Malawi and that there is no basis for the fear. He further argued that the Applicant can surrender travel documents and that he has young children such that he cannot run away. He further argued that the applicant has a good defence and that the incident was a pure accident.

Upon hearing both parties, the court sought clarification on paragraph 11 of the State's response where the State stated that Applicant was arrested by members of the community on the same day and they surrendered him to police considering that there were police officers at the place of the incident. On his part, Counsel for the Applicant insisted that the Applicant was arrested on sight immediately after the incident and that he was arrested by the police. The matter was adjourned to allow the state to provide further and better particulars under. In doing this, the court was mindful Bail Guidelines Act in Section 3 under Part II on Bail by the Court in of Paragraph 3 where the Court is empowered to call for sufficient information where insufficient information is available before the court.

When the court reconvened, the State just came back with a word of mouth repeating what had already been stated in their affidavit in opposition to the application. Counsel for State argued that the Applicant ran away from the scene and was apprehended by members of the community. It was therefore he State's submission that considering this and the nature of the sentence to be imposed in the event of a conviction, and the strength of the case against him, the Applicant may be tempted to abscond bail. In reaction Counsel for the Applicant argued that it would have been prudent for the State to have brought the person who apprehended the Applicant for cross examination otherwise, they argued that the Applicant maintains that he was arrested at the scene

Both law and case authority support the proposition that every detained person is entitled to be released on bail subject to the interest of justice. The duty of satisfying the court why bail should not be granted in the interest of justice lies on the State. However, although 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 Applicant and the interests of justice. This is according to Section 3 Part II on Bail by the Court Paragraph 9 of the Bail Guidelines Act which provides as follows;

*“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.”*

Paramount to the interest of justice is the availability of an Accused at trial. Likelihood of absconding once granted bail justifies the denial of bail in the interest of justice. The Bail Guidelines Act in Section 3 under Part II on Bail by the Court Paragraph 4(a) lays down factors which the court has to consider when determining whether or not an Applicant can abscond bail if released. These factors include the following;

- the nature and the seriousness of the offence for which the accused is to be tried;
- the strength of the case against the accused and the temptation that he or she may in consequence attempt to evade his or her trial;
- the nature and the severity of the punishment which is likely to be imposed should the accused be convicted of the offence against him or her;
- whether the extradition of the accused could readily be effected should he or she flee across the borders of the Republic in an attempt to evade his or her trial;
- whether the accused is in custody on another charge;
- the emotional, family, community or occupational ties of the accused to the place at which he or she is to be tried;
- the assets held by the accused and where such assets are situated;
- the means and travel documents held by the accused which may enable him or her to leave the country;
- and any other factor which in the opinion of the court should be taken into account.

Whilst, appreciating that the Applicant as an accused person is entitled to be presumed innocent until proven otherwise, it is noted that there is no denial as to the fact that the Applicant caused the death of the deceased who was at a road block and was on duty at the time of the incident. The manner of the arrest of the Applicant is in issue, the Applicant in his affidavit in support of the application stated that he was immediately arrested by the Police on the spot and placed at Mangochi Police. The State on their part indicated that the Applicant was arrested by members of the community who then handed him over to the police. The version of the Applicant however is not adding up. In his statement he said he was driving cautiously at around the road block. If he was driving cautiously knowing that this was at a roadblock, then he should have known that at any time, an officer would stop him and he ought to have been prepared to stop. So if his version was to be considered to be the correct version of events, then he could have been able to stop before hitting the deceased. In addition, it was argued by Counsel for the Applicant that the Applicant did what he did because he was mentally unwell due to domestic violence and that there

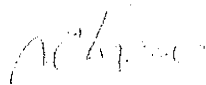
was no malice. This argument does not add up with the statement that he was driving cautiously. If this was a pure accident committed by a driver who was driving cautiously, then the defence of the status of the mind at that time does not arise. And indeed if such a defence is to arise, it would also suggest that perhaps the State's version of the manner of arrest could be true and that the Applicants denial of the same is because at that time his mind was affected and he could not properly comprehend what was happening. The court would therefore proceed on the basis that he was arrested by members of the community because he attempted to flee the scene after the accident.

In the circumstances, considering of the nature of the offence, the likely punishment in the event of conviction, the manner in which the offence was allegedly committed and the strength of the case against the Applicant in the light of the conduct of the Applicant the after the alleged commission of the offence raises a likelihood of absconding in the event of he is granted bail. It is therefore not in the interest of justice that bail should be granted Bail is therefore denied. Instead the court directs that there be a speedy trial in this matter.

Since the State has indicated that investigations are over and that they are ready for trial, the court directs that the state undertakes all preliminary steps for the trial of the matter including committal of the Applicant to High Court for trial, filing and service of disclosures, filing and serving of the charges on the Applicant within 45 days. Plea and directions to be done not later than 7<sup>th</sup> July, 2022.

It is so ordered.

Pronounced in Chambers this 23<sup>rd</sup> Day of May, 2022.



**Violet Palikena-Chipao**

**JUDGE**