



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

BAIL APPLICATION CAUSE NUMBER 127 OF 2021

BETWEEN

ISSA JOHN ..... APPLICANT

AND

THE REPUBLIC ..... RESPONDENT

*Coram: Honourable Justice Violet Palikena-Chipao  
Debwe, of Counsel for the Applicant  
Kumwenda, Senior State Advocate, of Counsel for the Respondent  
Kazambwe (Ms), Official Interpreter and Court Clerk*

RULING ON APPLICATION FOR BAIL PENDING TRIAL

1. The Applicant, Issa John, is on remand at Domasi Prison on allegations of murder.
2. The Applicant was arrested by police in September 2019 on the allegation of having caused the death of Maureen.
3. The brief facts are that the Applicant and his brother met the deceased and her friend as they went to the Dimba and they greeted each other. Later Maureen went missing and the Applicant was questioned as to the whereabouts of Maureen. After sometime, Maureen was found dead and the Applicant was arrested in connection to the death.

4. The Applicant has been in custody since she was arrested in September, 2019. It is on the basis of the length of stay on remand without prospects of trial in the near future and the fact that the Applicant's continued stay in custody is illegal as his pre-trial custody time limit expired long ago, that the Applicant prays to this court for bail.
5. The State has indicated that investigations were completed but that they are yet to receive the docket from the Police. The State did not object to the bail application.
6. The right to bail is guaranteed by section 42(2) (e) of the Constitution is subject to the interests of justice. Interest of justice has not been defined in the Constitution but the Bail Guidelines Act of 2000 offers guidance on what to consider when 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 principles which the court should take into when deciding whether or not to grant bail.
  - (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
7. The duty lies on the State to satisfy the court why bail should not be granted in the interest of justice. 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 Applicant and the 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."
8. The State has not opposed the application for bail and has not laid any grounds why bail should not be granted in the interest of justice. The Court also has not found anything against the granting of bail more so considering that the Applicants have been on remand for over 3 years. The Applicant have overstayed on remand and it is only just that she be released on bail. Bail is therefore granted to the Applicant 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 Fridays every fortnight
  - e. Applicant is to surrender travel documents to the court if any.

9. 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 10<sup>th</sup> March, 2022 at 9am.

It is so ordered.

Pronounced in Chambers this 6<sup>th</sup> Day of January, 2022.

A handwritten signature in black ink, appearing to read 'V. Palikena-Chipao', written in a cursive style.

**Violet Palikena-Chipao**

**JUDGE**