

REPUBLIC OF MALAWI

IN THE HIGH COURT OF MALAWI
ZOMBA DISTRICT REGISTRY
HOMICIDE CASE NO. 14 OF 2021

CHIMWEMWE SALAWE
BETWEEN
APPLICANT
AND
THE REPUBLIC
RESPONDENT

CORAM: Honourable Justice Z.J.V. Ntaba
Ms. A. Musa, Counsel for the Applicant
Mr. A. Mphepo, Counsel for the State
Ms. C. Nyirenda, Court Clerk and Interpreter

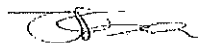
RULING

- 1.1 The Court is hearing this application for the second time following an adjournment by the Court to allow the State. During the first pleas and directions hearing on 15th November, 2021, the Court was informed that the accused was arrested on 18th September 2021 on the allegation that she had caused the death of Emmanuel Maganga due to a debt owed to her. The circumstances of the case were that following the failure to pay the debt owed, the accused locked the deceased in a car where he became unwell and eventually died. The State indicated to the Court that the hearing could not proceed as they had not finalized investigations as the offence had occurred in September, 2021 as such they were seeking an adjournment to conclude the same.
- 1.2 The accused argued that it was not known how much time the State wanted to conclude the investigations. It was their contention that the accused in the circumstances be given bail as such would be just and fair. Accordingly, the particulars of the accused are that she is aged 35 and hailing from Poko village under Traditional Authority Nkanda in Mchinji. She is a business woman and owns a shop pin Mulanje and has a child aged 11. She resides in Nkhonya village under Traditional Authority Chikumbu in Mulanje. She prayed that she will abide by the terms and conditions set by the Court if bail was granted. The Court refused to grant bail and granted the State, their prayer for an adjournment because the statutory pre-trial custody limit had not lapsed.

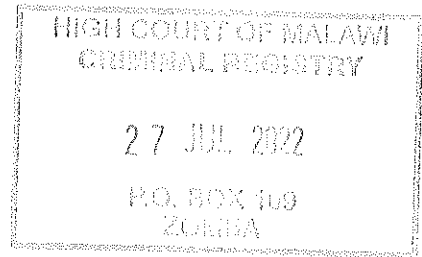
- 1.3 The pleas and directions hearing resumed on 13th December, 2021 and the Court was informed by the State that investigations had been completed however they had still not been furnished with the police docket. The State was therefore once again praying for another adjournment. In response the Applicant reminded the Court of its earlier bail application and indicated to the Court that the State was not objecting. The State confirmed their non-objection and only prayed that bail conditions be those that allow for the attendance of the accused for trial.
- 1.4 The Court has carefully reviewed the application and notes the non-objection by the State. In terms of the accused, it is noted that her statutory pre-trial custody limit following her arrest expires on 18th December, 2021. Notably, it has been advanced that investigations are completed, therefore indicating to the Court that there is a small likelihood that the accused would tamper with evidence or witnesses. Taking into account the law on bail, this Court reminds itself that the same is a constitutional right albeit limited. The limitation however is based on the interests of justice as well as the Court's discretion which in this case highly favours the granting of bail.
- 1.5 Accordingly, this Court hereby determines that the interests of justice in terms of Ms. Salawe be granted bail as it is her constitutional right and the balance in this case rests in her favour. Accordingly bail is granted on the following terms -
- 1.5.1 that she pay a cash bail bond of K300,000.00 before her release;
 - 1.5.2 she provide two sureties to be examined by the Assistant Registrar who will be bonded for a non-cash sum of K1,000,000.00 each;
 - 1.5.3 she report to Phalombe Police Station once every month on a Tuesday;
 - 1.5.4 she surrender any travelling document;
 - 1.5.5 she seek permission of Office in Charge of the above Police Station to travel outside Phalombe;
 - 1.5.6 she provide a copy of her national identification card before her release;
 - 1.5.7 she not interfere with State witnesses or nor tamper with evidence; and
 - 1.5.8 she be bound to keep the peace and not commit any crime.

I order accordingly.

Dated this 16th day of December, 2021.



Z.J.V Ntaba
JUDGE



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

BAIL APPLICATION CAUSE NUMBER 147 OF 2021

BETWEEN

MAVUTO MATAKA

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, Mavuto Mataka, is on remand at December, 2018 on the allegation of having caused the death of his brother.
2. The brief facts are that the Applicant and his brother went for beer drinking. His brother wanted to go to secondary school but the Applicant stopped him. Later his brother sneaked out and the Applicant went to look for his brother at his house but did not find him at his house. On following up, he found his brother very weak along the railway line and took him to hospital.

The brother later died and the Applicant was arrested on the allegations that he had caused the death of his brother being the last person seen with his brother

3. The Applicant has been in custody since he was arrested in September 2018. 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.
4. 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.
5. 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
6. 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."
7. 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.

8. 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 10th March, 2022 at 9am.

It is so ordered.

Pronounced in Chambers this 6th 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