

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

BAIL APPLICATION CAUSE NUMBER 35 OF 2022

BETWEEN

LASTON NGOLESHAKA APPLICANT

AND

THE REPUBLIC RESPONDENT

*Coram: Honourable Justice Violet Palikena-Chipao
Mr. H. Ching'anda, 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 Applicant, Laston Ngoleshaka, is on remand at Zomba Maximum Prison on allegations of murder.
2. The Applicant was arrested by Jali police in 27th July, 2020 on the allegations of having caused the death of his brother-in-law, Marko Golden (Khoviwa Golden).
3. The brief facts are that on the material day, the Applicant went to Asisi bar for drinking with the deceased. They quarrelled and parted ways each to his home.

The deceased however later followed the applicant to his home and a fight ensued. The applicant hit the deceased with a metal bar which the deceased had taken and the deceased fell down. The Deceased was taken to hospital where he was pronounced dead.

4. The Applicant was arrested by police and was taken to magistrate court on 1st August, 2020.
5. The Applicant has been in custody since then and over one year has elapsed. It is on the basis of the length of stay on remand without prospects of trial in the near future and that the Applicant prays to this court for bail pending his trial.
6. The State has indicated that investigations were completed but that they are yet to receive the docket from the Police. The State undertook to commence trial at the soonest time possible. When asked how soon the State can commence trial, the state indicated that they can do so within 60 days.
7. The State however did not object to the bail application.
8. 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
9. 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."

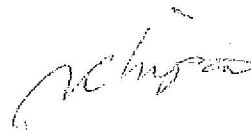
10. The State has not opposed the application for bail and has not laid any grounds why bail should not be granted in the interest of justice. The Court also has not found anything against the granting of bail. The Applicant has been on remand since August 2020. It is not clear as to when trial may commence. In the circumstances, the court finds it in the interest of justice to grant bail to the applicant. 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.

11. 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 at 9am.

It is so ordered.

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



Violet Palikena-Chipao

JUDGE