



**REPUBLIC OF MALAWI  
IN THE HIGH COURT OF MALAWI  
ZOMBA DISTRICT REGISTRY  
CRIMINAL DIVISION  
MISCELLANEOUS CRIMINAL BAIL APPLICATION NO 14 OF 2022**

**BETWEEN**

**BROWN JAMES MUJIYA.....APPLICANT**

**-AND-**

**THE REPUBLIC.....RESPONDENT**

**CORAM: HONOURABLE JUSTICE TEXIOUS MASOAMPHAMBE**

Ms K Chingeni, of Counsel for the Applicant  
AK Mphepo, of Counsel for the Respondent  
M Malipa, official Court Interpreter

**INTRODUCTION**

There is before this Court an application by the Applicant, Brown James Mujiya, inviting this Court to grant him bail pending continuation of trial. The application is brought under Section 118(3) of the Criminal Procedure and Evidence Code (CP&EC), Part II (1), (4) of the Bail (Guidelines) Act and Section 42(2) (e) & 42(2)(b) of the Constitution. The Application is supported by an affidavit sworn by Hanleck Chinganda Counsel for the Applicant which is dated 4<sup>th</sup> February 2022. The Applicant also filed skeleton arguments in support of the Bail application. The Respondent filed an affidavit opposing the bail application sworn by Counsel Adson Mphepo which is dated 10<sup>th</sup> February, 2022 and they also filed skeleton arguments.

## **BACKGROUND**

The Applicant was arrested on 12<sup>th</sup> September, 2011 by Mangochi Police on allegation of causing the death of Edson Davis (deceased). The deceased was employed as *kabaza* operator and had a habit of knocking off late after mid-night. On 1<sup>st</sup> September 2011 the deceased was working late and a customer hired him to go to Mapira Village. On his way he was stabbed and died on the spot. The body of the deceased was found lying dead facing downwards with a stabbed wound on the left side of his chest. The post mortem revealed that the death occurred due to blood loss due to the stab wound. The Applicant was taken to Mangochi the same day the offence was committed, where he was later transferred to Zomba Prison. The trial commenced on 11<sup>th</sup> November, 2014 before Honourable Justice Ntaba and the State paraded 7 out of 9 witnesses and due to time the Court adjourned the matter to a later unspecified date. The Applicant applied for bail in November 2021 before Honourable Justice Ntaba but it was denied. The Applicant now applies to this Court for bail pending continuation of trial.

## **APPLICANT'S ARGUMENTS**

The Applicant argues that the time already spent in jail is unreasonable and breaches the right to fair trial and such trial to be tried within reasonable time. The applicant further states that his continued incarceration after the expiration of the allowed pre-trial custody time limit without releasing him on bail is a mockery to the criminal justice. The applicant is of the view that he will avail himself for trial and comply with the conditions the Court may order. Further, that there is uncertainty as when or whether the state will finalise prosecuting him in this matter, hence bail should be granted by this Court to him.

## **RESPONDENT'S ARGUMENTS**

The State argues that the Applicant committed a serious offence and that investigations are over. The State also states that trial of the matter commenced on 11<sup>th</sup> November 2014, and was adjourned to a later date with 2 witness remaining to be paraded. That the State is looking for a date that will be given for trial to continue. Further, that in November 2014, the Applicant applied for bail and it was dismissed. Therefore, based on the factors stated this Court should exercise its discretionary powers not to grant bail to the Applicant.

## **ISSUES FOR DETERMINATION**

Whether or not the Applicant should be released on Bail.

## **ORDER AND DIRECTION**

I have carefully considered the application herein and the response from the respondent. In view of the fact that this court has verified that the hearing of the substantive matter is at an advanced stage before Honourable Justice Ntaba, and that at the time of making the present application during Camp Court at Zomba Maximum Prison, a good number of state witnesses had already been paraded, it would not be proper for this court to entertain the present application. For proper case management, I urge Counsel for the Applicant to file the same with the judge who is seized of this matter. It is so ordered.

Made in open Court, this 1<sup>st</sup> day of February, 2023 at Zomba.



***Texious Masoamphambe***  
**JUDGE**