



**IN THE HIGH COURT OF MALAWI  
PRINCIPAL REGISTRY  
CRIMINAL DIVISION  
HOMICIDE CASE NO. 263 OF 2016  
(BAIL APPLICATION)**

**BETWEEN:**

**CHARLES KUMBUYO.....1<sup>st</sup> APPLICANT**

**LOGINA MLEMGA.....2<sup>nd</sup> APPLICANT**

**AND**

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

**Coram: Hon. Justice M L Kamwambe**

Mr Salamba of counsel for the State

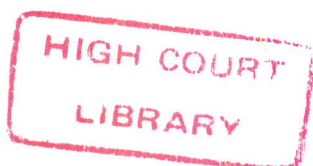
Mr Maele of counsel for the Applicant

Mr Amos.....Official Interpreter

**BAIL ORDER**

Kamwambe J

The two murder suspects applied for bail. The two were in a love relationship. They are alleged to have caused the death of an unknown person who was found dead at the premises or house of the 2<sup>nd</sup> Applicant who seemingly carried on business of prostitution. No independent person witnessed the murder. It is alleged that as the 2<sup>nd</sup> Applicant was trying to run away to Mozambique in fear of the consequences of the murder, she told the secret to some people and later upon arrest, the police, that the 1<sup>st</sup> Applicant found the deceased red handed in a sexual act with her (2<sup>nd</sup>



Applicant) at night and a fight ensued and she joined the fight against the deceased. The deceased sustained a stab wound on the neck from which he bled profusely. It does not come out clearly who stabbed the deceased. This took place sometime in September, 2016.

According to the case of **Fadweck Mhave v Republic** MSCA Criminal Appeal No. 25 of 2005 the Supreme Court of Appeal interpreted section 42 (2) (e) of the Constitution to mean that all offences are bail able even the so called heinous offences such as murder and treason, unless the interest of justice requires otherwise. This places the burden on the State to prove the interest of justice justifying further incarceration. The Bail Guidelines Act 2007 were enacted to lead us into factors to consider when granting or denying bail. One important consideration is that the applicant/offender shall attend bail. If there are strong indications that he or she may not attend court at the set day, the court is entitled to use its discretionary powers of denying one bail.

The State is objecting to granting bail to the two Applicants on the basis of confession statement made by the 2<sup>nd</sup> Applicant as stated above. The State says that the 2<sup>nd</sup> Applicant is a flight risk since she attempted to flee when people asked her what she was doing. The State is of the view that there is strong evidence against the Applicants. Further it states that investigations are over and only the case docket remains to be sent to the State Advocate Chambers by the police.

According to section 176 (2) of the Criminal Procedure and Evidence Code, where there are more than one accused persons jointly charged of an offence, a confession by one of them if it implicates the co-accused person/s is only evidence against himself/herself, unless the implicated co-accused person/s adopt the said confession as his, hers or their own. This means that there is no evidence implicating the 1<sup>st</sup> Applicant if the evidence of 2<sup>nd</sup>

