

**IN THE HIGH COURT OF MALAWI**

**MZUZU DISTRICT REGISTRY**

**MISCELLANEOUS APPLICATION NO. 8 OF 2001**

BETWEEN

**VILIMUMO MLENGA**

**APPLICANT**

AND

**THE REPUBLIC**

**RESPONDENT**

IN THE MATTER OF AN APPLICATION BY VILIMUMO MLENGA FOR BAIL SECTION 42(2)(E) OF THE CONSTITUTION AND SECTION 118 OF THE CRIMINAL PROCEDURE AND EVIDENCE CODE (CAP 8:01) OF THE LAWS OF MALAWI

**CORAM: HONOURABLE JUSTICE L P CHIKOPA**

Ngwira of Counsel for the Applicant

Msowoya State Counsel for the Respondent

Kumwenda, Official Interpreter

**Mwakikunga Ms. Official Recorder**

**Chikopa, J**

### **RULING**

The applicant says he was arrested on February 21, 2001 on allegations of murder. He has since been remanded in custody at Mzuzu Prison. He brings this application under section 42(2)(e) of the constitution and section 118 of the CP&EC. He wants to be granted bail.

It was his assertion that he has, since his arrest not been charged with any offence as decreed by section 42(2)(e) of the constitution nor has he been informed of the reasons for his continued detention.

Clearly the applicant is not, but for this application and as I understand this application, before any court. My understanding of the law is that one cannot ask for bail, which is in my view itself an anomaly in the present circumstances, other than before the court in which one is appearing. Because the applicant is not appearing in this court he cannot come here and ask for bail. Reading his affidavit, in which he says he has neither been charged nor brought before court within the constitutional 48 hours, the only way he could have come here was by application for a writ of **habeas corpus**. It would then have been up to this court to order that he be brought before us to be dealt with according to law one of whose results would include (though not exclusively) the granting of bail.

Alternatively he could have come here to challenge the legality of his detention/arrest. If successful, it would again have been up to this court to release him from detention with or without bail. That in my view is the purport of section 42(2)(e) aforesaid. Not the one that the applicant sought to attribute to it.

I should also add that I fail to appreciate the use of section 118 above mentioned in this application. Like I said the applicant's matter is not before this court. On the other hand, bail applications under that section heard in this court presuppose that a magistrate's court has declined to grant bail. They thus come to this court by way of appeal. Such is not the case in this matter. Strictly speaking I should have been minded to dismiss this application for lack of competence. I am however informed by the state that it is not its intention to keep the accused in custody. They are of the view there might be problems with proving causation herein. If the state wants to release the accused I see no lawful reason why this court should prevent them from doing so. Certainly not only because this application is lacking in competence. That would be tantamount to paying undue regard to technicalities at the expense of justice. I shall therefore allow the state to release the applicant. I shall attach conditions however. He shall be bonded in the not cash sum of K15000.00. He must also provide two sureties who must be bonded in the not cash sum of K1000.00 each. The applicant shall also report at Chitipa police station and Chitipa

Magistrates Court once every Monday until his matter is disposed of or until further lawful order or orders of a competent court.

**Pronounced** in open court this 27<sup>th</sup> day of June 2001.

**L P CHIKOPA**

**JUDGE**