

**IN THE HIGH COURT OF MALAWI  
PRINCIPAL REGISTRY  
MISC. CRIMINAL APPLICATION NO. 145 OF 2001**

**BETWEEN:**

**FAGESI GADAMA.....APPLICANT**

**-and-**

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

**CORAM: HON. JUSTICE A.C. CHIPETA**

**Mr T.S. Chirwa, of Counsel for the Applicant**

**Mr Kamwambe, Chief State Advocate for the Respondent**

**Mr Nthole, Official Interpreter**

**RULING**

I need not labour myself as much as I did on 8th June, 2001 when the same Applicant was before me on the same subject of bail under Miscellaneous Criminal Application No. 96 of 2001 via the Chambers of M/s Chizumila and Msiska, Legal Practitioners. Apparently someone misunderstood my ruling and then advised the learned Mr Chirwa, present Counsel for the Applicant, that if only he dug out information on the ages of the children the Applicant is crying to see at home I would grant bail. The decision I pronounced is a matter of public record and so I need not here repeat what it contains as that can easily be ascertained directly from that record.

I will only say that I fully stand by my said earlier holding which was to the effect that the Applicant had duly failed to show me any exceptional circumstances to entitle her to bail in this homicide matter. Actually with particular reference to the Applicant's children including the one who was persistently referred to as being a breast-feeding one my holding was in the words "---I do not see the children of the Applicant, and in particular I do not see the last born child of the Applicant as being an exceptional circumstance, to warrant bail in this grave matter" at P. 4.

In this fresh or alternative application the additional detail supplied is that the Applicant's

last born child is only one and a half years old while the other two are 5 years and 7 years old respectively and that they are all in need of motherly care. Frankly speaking I do not know whether a child of one and a half years is or is not normally a breast feeding child. I must say however that that age does not alarm me into any panic on the question of bail raised herein. From affidavit evidence it would appear that the Applicant has now been in custody for some six months. If that child has survived that six months I think it can also survive the period from now to the trial of its mother. If the Applicant cannot bear this the onus is on her to convince the Commissioner of Prisons that her infant child is unweaned so that under S60 of the Prisons Act the child may be accepted to join her in custody and live therein at Government expense.

All in all for the same reasons I stated in the ruling I have referred to I see no exceptional circumstances in this case and so I dismiss the application lodged by the Applicant.

Made in Chambers this 2nd day of October, 2001 at Blantyre.

**A.C. Chipeta**

**JUDGE**