



IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
CRIMINAL DIVISION
HOMICIDE CAUSE NO. 261 OF 2016 (BAIL APPLICATION)

BETWEEN:

DOROTHY MBETA
CHIPUZA GWADIRE
NINO GOSTINO SAIMALA
VERSUS
THE REPUBLIC

CORAM: HON. JUSTICE M.L. KAMWAMBE
Mr Salamba, of Counsel for the State
Mr Maere, of Counsel for the Applicants
Mr Amos, Official Interpreter

ORDER

Kamwambe J

This is a bail application by the three applicants namely, **Dorothy Mbeta, Chipuza Gwadire**, and **Nino Gostino Saimala**, who were arrested on 1st September, 2016, on the allegation that they caused the death of one Thomas Gwadire, who was trying to defend his brother White Gwadire when attacked by the Applicants.

Counsel for the Applicants has said that Thomas and White Gwadire did not show concern over their sisters' death and that White was sleeping in his house at the time of the funeral, instead of attending the funeral. This made the people to go to his house and assault White, Further, Counsel says the other people who were involved in the fracas are still in the village and there is no trouble in the village and he inquires how the release of the three will cause trouble in the village. There is no evidence that there is need for calm to be restored. Other people are such as Doreen Banda and Henry Malizani, who are still in the village with White and they have not taken any revenge on white Gwadire. The other reason given by Counsel is that the State has conceded that White was sleeping in his house when there was a funeral of his own sister who died in mysterious circumstances. There is no mention in the State's Affidavit that Dorothy took part in the assault, so there is no issue with her.

Further, Applicants say that they did not take any part in the assault on the deceased. That the State also says that it is not ready for prosecution. In response Mr. Salamba said they have objection to

the release of the three in the face of evidence that they have acquired now. They have got the docket just yesterday, hence, the late filing and they have referred to paragraph 5 and have said that it is not true that Dorothy was not mentioned. If we say Applicants we mean all of them, Dorothy inclusive. When they denied involvement they gave no explanation for it. Even if they may have permanent abode in Malawi but chances are that they can jump bail.

I have looked at all the facts given by both sides and I have considered the seriousness of this case. White who was attacked is still alive and if he did not see the three people, he could not have mentioned them in his statement to be his attackers. There was electricity light outside during the fracas. He recognized them.

In my view considering the fact that the stronger the evidence against an Applicant, the more likely he is to jump bail, and looking at the seriousness of the offence, I don't feel inclined to grant them bail, so bail is denied. However, I set the 16th January of 2017 as the date for trial.

Made in Chambers this 21st day of October, 2016 at Chichiri, Blantyre.

M. L. Kamwambe
JUDGE