



The Republic of Malawi

**IN THE HIGH COURT OF MALAWI  
LILONGWE DISTRICT REGISTRY  
CRIMINAL APPEAL NO. 187 OF 2016**

**BETWEEN**

**RAFIK IBRAHIM ..... APPELLANT**

**-VS-**

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

**CORAM : LADY JUSTICE I.C. KAMANGA**

: Mbwana, Counsel for the Appellant  
: Ndyani, Counsel for the Respondent  
: Tembwe, Court Interpreter

**JUDGMENT**

The applicant was convicted of the offence of being found in possession of a protected species contrary to section 86 (1) of the National Parks and Wildlife Act.

After pleading guilty to the charge, he was found in possession of Ivory weighing

88.4 Kilograms valued at MK11,837,000.00. The State pleaded for a custodial sentence. And the facts that moved the court to impose such a sentence included the fact that the offence herein was an organized transaction. The elephants are also becoming extinct.

The applicant sought that court should consider that prisons are overcrowded and are in very poor conditions and very conducive for diseases. That applicant is already sick. His health passport was presented to that effect. It was also submitted that he is 51 years old and therefore advanced in age. It was submitted that prison facilities are not built for elder people. And the applicant was a 1<sup>st</sup> offender. After considering all factors which included that maximum sentence is 10 years, the applicant was sentenced to spend 36 months imprisonment with hard labour. Considering that any ..... sentence would not reflect the seriousness of the offence.

The applicant moved this court to seek bail pending appeal. He indicated that before his conviction, he had been admitted on several occasions due to his severe hypertension and his right arm failure problems. And that from 6<sup>th</sup> day of January 2017 to date of the hearing, he was admitted at Kamuzu Central Hospital. He sought bail considering the exceptional circumstances in that his severe medical condition cannot be sustained and taken care of considering the conditions prevailing at Maula. He is afraid that he might lose his life due to inadequate medical attention at Maula.

After going through the record and the application herein, I note that the applicant is a convict. And right to bail expires upon conviction. He pleads exceptional circumstances in that he is looking for facilities that would ably take care of his medical state as he awaits the hearing of the appeal. It is the considered view of this court that there are no exceptional circumstances that have been demonstrated that require release of a convict. The affidavit indicates that he is at Kamuzu Central Hospital an indicator that the prison is trying its best to manage his medical condition in the time being. If anything, the applicant should just expedite the hearing of his appeal.

Bail is denied. Application is dismissed.

Pronounced in Chambers this 4<sup>th</sup> day of February 2017.

I.C. Kamanga

**JUDGE**