



**IN THE HIGH COURT OF MALAWI  
ZOMBA DISTRICT REGISTRY  
MISCELLANEOUS CRIMINAL CAUSE NO. 97 OF 2017**

**BETWEEN**

**FLETCHER NDHLOZI** ..... **APPLICANT**

**AND**

**THE STATE** ..... **RESPONDENT**

**CORAM** : **Z NTABA, J.**  
 : Ms. S. Chirwa, Counsel for the Applicant  
 : Mr. Chisanga, Counsel for the Respondent  
 : Mr. A. Nkhwazi, Court Clerk

**Ntaba J.**

**RULING**

**1.0 BACKGROUND**

1.1 The High Court, Legal Aid Bureau, State Advocate Chambers, Malawi Prison Services and the Paralegal Advisory Services noted that alarming numbers of homicide remandees in the Eastern Judicial Region and embarked on a number of prison camp courts in order to hear bail applications in March, 2016. The parties agreed that for these bail applications to take place within the bail premises at Chilwa Reformatory School which had a huge number of overstayed remandees, that is, more than the required statutory period of 90 days as per section 161G of the Criminal Procedure and Evidence Code.

1.2 The Applicant filed summons and supported the same with an affidavit and skeleton argument. The application was brought under section 42(2)(e) of the Republic of Malawi Constitution, sections 161G and 118(3) of the Criminal Procedure and Evidence Code as well as Part II(1)(4) of the Bail Guidelines Act. The State responded orally to the Applicant's application.

**2.0 THE BAIL APPLICATION**

2.1 The Applicant, Fletcher Ndhlozi stated that he was 15 years old and hailed from Kansombe Village under Traditional Authority Simlemba in Kasungu. He was

arrested 3<sup>rd</sup> September, 2015 by Kasungu Police. His only court appearance was before Kasungu Magistrate Court on 8<sup>th</sup> September, 2015. He was at Mpemba Boys Home where he was being moved to Chilwa Reformatory School on his 15<sup>th</sup> birthday. He indicated that he has no family or other connections outside Malawi. He also indicated that he has always been a resident of Malawi. His bail prayer was that he will comply with all bail conditions and shall reside at his father, Malinga Ndhlozi at his home village.

- 2.2 The State in response confirmed that the Applicant murdered Simon Ngulube. The two had been involved in an altercation which was provoked by the deceased. The State indicated that the release of the Applicant on bail will not jeopardize the interests of justice. They prayed that the Applicant provide two reliable sureties and a non-cash bond.

### 3.0 COURT'S DETERMINATION

- 3.1 This court recognizes that the constitutional right to bail is enshrined in section 42(2)(e) of the Malawian Constitution. Malawian law also recognizes that the right to bail is not an absolute right and is subject to limitations of the interests of justice. Their Lordships in the *Fadweck Mvahe v The Republic* MSCA Crim. Apl. 25 of 2005 case stated that –

*“Just to recapitulate, we have indicated that it is common ground that the High Court has power to release on bail any person accused of any offence including murder. We have indicated also that it is common case that the right to bail stipulated in section 42(2)(e) of the Constitution is not an absolute right; it is subject to the interests of justice.”*

- 3.2 Furthermore the Bail Guidelines Act in Guideline 4 of Part II, stipulates that –

The principles which the court should take into account in deciding whether or not bail should be granted include the following—

- (a) the likelihood that the accused, if released on bail, will attempt to evade his or her trial; and in considering this principle the court may, where applicable, take into account the following factors—
- (i) the nature and the seriousness of the offence for which the accused is to be tried;
  - (ii) the strength of the case against the accused and the temptation that he or she may in consequence attempt to evade his or her trial;
  - (iii) the nature and the severity of the punishment which is likely to be imposed should the accused be convicted of the offence against him or her;
  - (iv) whether the accused is in custody on another charge;
  - (v) the emotional, family, community or occupational ties of the accused to the place at which he or she is to be tried;
  - (vi) the assets held by the accused and where such assets are situated;
  - (vii) the means and travel documents held by the accused which may enable him or her to leave the country;
  - (viii) the extent, if any, to which the accused can afford to forfeit the amount of bail which may be fixed, thereby inducing him or her to jump bail;
  - (ix) whether the extradition of the accused could readily be effected should he or she flee across the borders

of the Republic in an attempt to evade his or her trial; and  
(x) any other factor which in the opinion of the court  
should be taken into account;

3.3 Markedly, the State has not raised any objection as the pre-trial custody limit has been breached. Further that the State has no idea as to when it shall be trying the Applicant. This court has carefully examined the facts and analyzed the law and notes that bail in Malawi is a constitutional right although not absolute but available to all accused. Furthermore, bail shall be granted to an accused as long as the interest of justice require as held in the *Mvaha* case.

#### 4.0 ORDER

4.1 This court therefore orders that bail be granted.

4.2 The Applicant is therefore bound on the following conditions –

4.2.1 he produce two (2) sureties and each surety to be bonded in the sum of K100,000.00 not cash. The said sureties be examined by the Registrar within twenty one (21) days of this order on a date and time to be fixed by her;

4.2.2 he report every Monday to Kasungu Police Station except if required to report to Court on the same day;

4.2.3 surrender any travel documents to the said Police Station and not to leave the country without the written authority of the officer-in-charge of the Police Station;

4.2.4 seek written permission from the officer-in-charge of the said Police Station if they wants to travel outside Kasungu;

4.2.5 be bound to keep the peace and refrain from tampering with state witnesses; and

4.2.6 not commit any crime during the subsistence of his bail.

4.3 The State is further ordered to do all necessary issues for pretrial procedures including committal procedures as discovery of documents by 31<sup>st</sup> January, 2017.

I order accordingly.

**Made in chambers this 5<sup>th</sup> day of January, 2018.**



**Z.J.V. Ntaba**  
**Judge**