



REPUBLIC OF MALAWI
IN THE HIGH COURT OF MALAWI
ZOMBA DISTRICT REGISTRY

BAIL APPLICATION CAUSE NUMBER 163 OF 2021

BETWEEN

GEORGE NYENGA, MICHAEL KACHINGWE &
TIMOTHY KAPOLO

APPLICANT

AND

THE REPUBLIC

RESPONDENT

*Coram: Honourable Justice Violet Palikena-Chipao
Ndeketa, of Counsel for the Applicant
Nkweza, Senior State Advocate, of Counsel for the Respondent
Kazambwe (Ms), Official Interpreter and Court Clerk*

RULING ON APPLICATION FOR BAIL PENDING TRIAL

1. The Applicants, George Nyenga, Michael Kachingwe & Timothy Kapolo, are on remand at g at the Zomba Maximum Prison on allegations of murder.
2. The Applicants were arrested by Thondwe police in February, 2017 on allegation of causing death of Chiyembekezo Maliakini.
3. The Applicants are ex-convicts of murder offence and were discharge from prison in 2016
4. Since their arrest in in February 2017, the Applicants have been in custody. The State has indicated that the docket is ready and that what is remaining is to commit the Applicant to High Court for trial. The State has also indicated that the Applicants admitted killing the deceased.

5. It is on the basis of the length of stay on remand without prospects of trial in the near future and the fact that the Applicant's continued stay in custody is illegal as his pre-trial custody time limit expired long ago, that the Applicant prays to this court for bail. The State has not objected to the application but has argued that the Court may consider granting bail or expediting the trial of the three.
6. The right to bail is guaranteed by section 42(2) (e) of the Constitution is subject to the interests of justice. Interest of justice has not been defined in the Constitution but the Bail Guidelines Act of 2000 offers guidance on what to consider when deciding whether or not it is in the interest of justice to grant bail. The Bail Guidelines Act in Section 3 under Part II on Bail by the Court Paragraph 4(a) to (d), lays down principles which the court should take into when deciding whether or not to grant bail.
 - (a) the likelihood that the accused, if released on bail, will attempt to evade his or her trial
 - (b) the likelihood that the accused, if he or she were released on bail, will attempt to influence or intimidate witnesses or to conceal or destroy evidence
 - (c) the likelihood that the accused, if he or she were released on bail, will endanger the safety of the community or any particular person or will commit an offence
 - (d) in exceptional circumstances, the likelihood that the release of the accused will disturb the public order or undermine the public peace or security
7. The duty lies on the State to satisfy the court why bail should not be granted in the interest of justice. Whilst the burden to show that the interests of justice require further detention lies on the State, the Court may also on its own, notwithstanding any representations to the contrary by the Applicant or the State or both, make its independent finding upon weighing the personal circumstances of the accused Applicant and the 9 interests of Justice. According to Part II Section 9 of the Bail Guidelines Act, "Notwithstanding the fact that the prosecution does not oppose the granting of bail, the court has the duty to weigh up the personal interests of the accused against the interests of justice."
8. The State has not opposed the application for bail and has not laid any grounds why bail should not be granted in the interest of justice. The Court also has not found anything against the granting of bail more so considering that the Applicants have been on remand for over 2 years. The Applicant have overstayed on remand and it is only just that she be released on bail. Bail is therefore granted to the Applicant on the following conditions;
 - a. Cash bond of K50, 000
 - b. Two sureties bonded in a non-cash sum of K100, 000
 - c. The Applicant and his sureties to produce their national identities
 - d. Applicant is to report for bail at the nearest police station on Fridays every fortnight
 - e. Applicant is to surrender travel documents to the court if any.
9. The State is directed to take all preliminary steps for the trial of the Applicant including committal proceedings and filing of disclosures within 60 days from today. The matter is to come for plea and directions on 9th March, 2022 at 9am.

It is so ordered.

Pronounced in Chambers this 6th Day of January, 2022.

A handwritten signature in black ink, appearing to read 'V. Palikena-Chipao', written in a cursive style.

Violet Palikena-Chipao

JUDGE