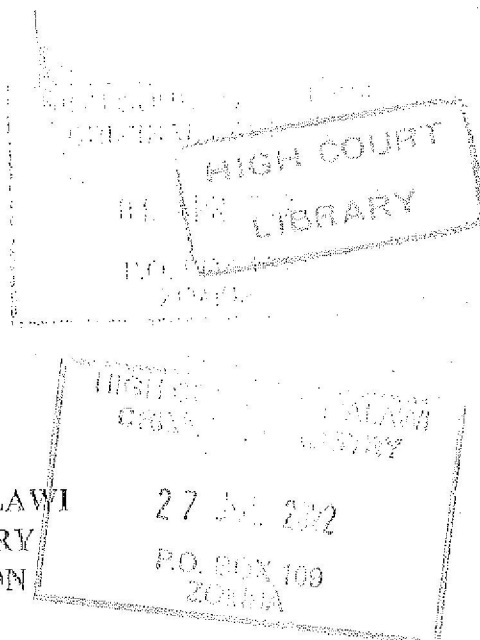


REPUBLIC OF MALAWI
IN THE HIGH COURT OF MALAWI
ZOMBA DISTRICT REGISTRY
SITTING AT ZOMBA PRISON



MISCELLANEOUS CASE NO. 51 OF 2022

BETWEEN

DICKSON SUSA APPLICANT

AND

THE REPUBLIC RESPONDENT

*Coram: Honourable Justice Violet Polikena-Chipao
Mr. K. Chingeni, of Counsel for the Applicant
Ms. L. Kulesi, of Counsel for the Respondent
Ms. A. Kazambwe, Official Interpreter and Court Clerk*

RULING ON APPLICATION FOR BAIL PENDING TRIAL

1. The Applicant is Dickson Susa of Kaliati village, T/A Kachenga, Balaka District. He is on remand at Zomba Maximum Prison on allegations of murder. He has asked the court to release him bail pending his trial.
2. The Applicant was arrested by Balaka police on 14th December, 2021 on allegations of having caused the death of his ex-wife, Esther Mtiwe
3. The brief facts are that Esther Mtiwe and the Applicant who had divorced had a dispute over land which was being occupied by the deceased. She was later found dead in a decomposed state in her house on 8th November 2021 having gone missing. She was found to have been murdered using a panga knife and post mortem report showed that death was due to severe head injury. The Applicant was arrested on suspicion that he is the one who caused the death of the deceased.

- The Applicant has indicated that since his arrest on 14th December, 2021 he has not been taken to court and that he is entitled to be presumed innocent and to be released on bail.
5. There is no objection from the State to the granting of bail. The State has indicated that investigations are over and that there cannot be any interference with witnesses. They are therefore of the view that the Applicant can be granted bail with conditions as the court deems fit.
 6. Since the State indicated that investigations are under way, they were asked as to what the investigations revealed in relation to the Applicant considering that in their response not much was stated apart from saying that the Applicant had a dispute with the deceased over a piece of land which was occupied by the deceased. The State simply indicated that it is believed that the Applicant stabbed the deceased. The source of such a belief was however not disclosed.
 7. The State further indicated that they are not ready for trial as they have not yet received the docket and the Applicant is yet to be committed to High Court for trial.
 8. Every person detained on allegations of committing an offence is entitled under section 42(2)(e) of the Constitution to be granted bail unless the interest of justice demands otherwise. It does not matter what the nature of the offence is as long as there is nothing in the interest of justice against the grant of bail. The Bail Guidelines Act in Section 3 under Part II on Bail by the Court Paragraph 4(a) to (d), lays down the principles which the court should take into account when deciding whether or not to grant.
 9. Following are the principles which the Bail Guidelines Act lays down;
 - (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
 10. 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 Applicant and the 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."
 11. The only available material for court's consideration on whether or not it is in the interest of justice to grant bail are the affidavit by Counsel for the Applicant and for the State which unfortunately have not provided sufficient information in relation to the offence and the Applicant.


12. Be that as it may on the material available and in the light of the legal requirements at this stage, this court does not find sufficient basis as to why bail should not be granted in the interest of justice. Bail is therefore granted on the following conditions;

- a. Cash bond of K30, 000
- b. Two sureties bonded in a non-cash sum of K100, 000
- c. The Applicant and his sureties are to produce their national identities before the court
- d. Applicant is to report for bail at the nearest police station on Thursdays every fortnight
- e. Applicant is to surrender travel documents to the court if any
- f. Applicant is not to leave Balaka without informing the Officer In-charge of Balaka Police Station.

13. The State indicated that investigations are over. The Court orders the State to take all preliminary steps for the trial of the Applicant including committal proceedings, filing and serving of disclosures within 90 days from today.

It is so ordered.

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



Violet Palikena-Chipao

JUDGE