

Justin Andison v Republic

Court:	High Court of Malawi
Registry:	Criminal Division
Bench:	Honourable Justice Violet Palikena-Chipao
Cause Number:	Bail Application Cause Number 125 of 2021
Date of Judgment:	December 06, 0022
Bar:	Debwe, of Counsel of the applicant Kumwenda, of Counsel for the respondent

Summary

The Applicant sought bail pending trial in the High Court, Zomba District Registry, following prolonged pre-trial detention on a murder allegation. The Applicant had been in custody since November 2017, accused of causing his wife's death, which a post-mortem indicated was due to strangulation. The deceased was epileptic and pregnant. The Applicant contended that his continued detention was illegal as his pre-trial custody time limit had long expired, with no immediate prospects of trial.

The State confirmed that investigations were complete but awaited the police docket and notably did not object to the bail application. The principal legal questions before the Court were whether to grant bail considering the Applicant's prolonged detention and the State's non-opposition, while also assessing the interests of justice as guided

by the Constitution and the Bail Guidelines Act. The appeal was allowed. The Court, observing the Applicant's over four years on remand and the State's lack of objection, found no reason to deny bail in the interests of justice. The Court granted bail with conditions including a K30,000 cash bond, two sureties bonded at K100,000 each, production of national IDs, fortnightly reporting to the nearest police station, and surrender of any travel documents. The Court further directed the State to commit the Applicant for trial to the High Court within 30 days and file necessary disclosures within 60 days, with a plea and directions hearing set for 10 March 2022.

Legislation Construed

1. Constitution of Malawi (s 42(2)(e))
2. Bail Guidelines Act (2000) (s 3, s 9)

Judgment

1. The Applicant, Justin Andson, is on remand at Domasi Prison on allegations of murder.
2. The Applicant was arrested by police in November, 2017 on the allegation of having caused the death his wife.
3. The brief facts are that the deceased was an epileptic woman who was also pregnant. The Applicant reported that the deceased had fainted and was taking long to regain consciousness. The deceased later died and the Applicant was arrested in

connection with her death. Post mortem indicated that the deceased died of strangulation.

4. The Applicant has been in custody since he was arrested in November 2017. 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.

5. The State has indicated that investigations were completed but that they are yet to receive the docket from the Police. The State did not object to the bail application.

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 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."

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 4 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 100, 000
- b. Two sureties bonded in a non-cash sum of K1 00, 000
- c. The Applicant and his sureties to produce their national identities
- d. Applicant is to report for bail at the nearest police station Fridays every fortnight
- e. Applicant is to surrender travel documents to the court if any.

9. The State is directed to commit the applicants for trial to the High Court within 30 days from today and file necessary disclosures within 60 days from today and the matter shall come to court for plea and directions on 10th March, 2022.

It is so ordered,

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