

Kettie Kamwangala v the Republic (2013)

MSCA Miscellaneous Criminal Appeal No. 6 of 2013

Summary

Court:	Supreme Court Of Appeal
Bench:	The Honourable Justice L.P Chikopa SC JA
Cause Number:	MSCA Miscellaneous Criminal Appeal No. 6 of 2013
Date of Judgment:	January 28, 2014
Bar:	C Gondwe, Counsel for the Appellant Salamba Senior State Advocate for the State

The Appellant appealed to the Malawi Supreme Court of Appeal, Principal Registry, against an order of the High Court, Lilongwe Registry, concerning her application for bail. The Appellant was one of a group of persons committed to the High Court for trial on charges of **Theft contrary to section 278 of the Penal Code** and **Money Laundering contrary to section 35(1)(c) of the Money Laundering Act**. The High Court had ruled to grant bail but, simultaneously, ordered the Appellant to remain in custody for a further 21 days to allow for the conclusion of investigations. Furthermore, the High Court imposed stringent conditions, including a surety bond of **K50 million** (non-cash)

for the Appellant, two cash sureties of **K2.5 million** each, and full disclosure of assets for forfeiture upon abscondment.

The principal legal questions were whether the High Court erred by ordering continued detention after granting bail and whether the bail conditions were unduly punitive and amounted to an effective denial of the Appellant's constitutional right to liberty. The Court allowed the appeal, setting aside the High Court's order and substituting its own order for the immediate release of the Appellant on revised conditions. The Court found that granting bail while ordering a further 21 days of detention was a "judicially sanctioned illegal detention" and an inherent absurdity, as a court cannot order liberty conditional upon continued detention. The Court also held that incomplete police investigations alone should not be a basis for denying bail and cautioned that detention must follow investigations, not precede them. Crucially, the monetary bail conditions were found to be punitive and to amount to a denial of bail, noting that the sum of K55 million was substantially higher than the K28 million allegedly stolen, which would effectively allow the State to profit upon a breach. The Court directed that the Appellant be immediately released subject to conditions, including cautions on her specified motor vehicles and plots, surrender of travel documents, restrictions on leaving the jurisdiction, and fortnightly reporting to the Malawi Police Regional Prosecutions Officer.