



IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY

MISCELLANEOUS CIVIL CAUSE NO 15 OF 2011

ALEX MKULA

vs

THE REPUBLIC

Coram:

Hon. Justice R. Mbvundula
Lemucha, Counsel for the State
Mambulasa, Counsel for the Applicants
Minikwa, Official Interpreter

RULING

The applicant is held in custody on an allegations that he committed, firstly, a robbery and, in the course of which, a murder. He swore an affidavit in support of the application now before this court in which he deposes that he is 31 year old and that he has been on remand since 17th August 2001 when he was arrested on suspicion that he was involved in the murder of a police officer. He then narrates his version of the incidents which led to his being suspected of the commission of the offence. He denies being involved in the commission of the offence and states that this is in spite of severe torture having been inflicted upon him by the police after his arrest. It is his case that he was taken before the Blantyre Magistrate's court in August 2001 where he was charged for murder and committed for trial in the High Court but has since not been brought before any court of law.

The applicant seeks an order of *habeas corpus* in respect of the murder charge and informs the court that he has a family house in Ndirande where he would return to and live with his parents and that it is safe for him to go back there, that his parents and sister could be his sureties. He further informs the court that he has no previous convictions and undertakes not to interfere with witnesses.

Counsel for the applicant also brought to the attention of the court an Order of the court made by Manda J on 26th day of October 2010 in which the Honourable Judge directed the state to provide this court with a definite timetable of how the applicant is to be tried and that the applicant's homicide case should be set down within two weeks of the date of the said 26th October 2010. That period has since expired. It was the applicant's case that the said order had since not been complied with. The state did not dispute this fact. It must be observed, though, that in making the order and directions aforesaid, the Honourable Judge specifically refrained from releasing the applicant on bail on the ground that granting bail would be tantamount to interference with the proceedings in the lower court.

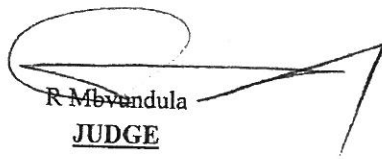
The state objects to the application. In the affidavit of the state the state narrates the facts which it alleges connect the applicant to the commission of the offence. It is averred that on account of those facts there was more than enough reasonable basis for the arrest of the applicant for the offence of murder but that in the course of things the applicant's file was lost "in the system" which resulted in the applicant staying in custody for such a long time. No mention however is made of the precise circumstances in which the file was lost nor when the same was located. The latter is pertinent in so far as informing the court how long after the recovery of the file the state has continued to hold the applicant without bringing him for trial. All the state has said is that the state has been unable to try the applicant because of the circumstances beyond the control of the state, to wit, the loss of the applicant's file "in the system". It is then averred on behalf of the state that all witnesses have been traced and that the state intends to have the matter set down as soon as possible so that the case can be heard and concluded and to this end it is said that it has been agreed between the state and the Registrar's office that the applicant's trial should be included on the next cause list for Blantyre so that he can be tried. The state prays that rather than set the applicant at liberty the court should grant the applicant bail with such strict conditions as will ensure his attendance at the trial.

On the foregoing facts and submissions I am of the view that this is a proper case in which the applicant must be set at liberty forthwith. I am however mindful of the fact that it is in the interest of the public that persons accused of offences, particularly those of a serious nature such as the one the applicant is charged with, ought to face trial. In that regard it is important that some conditions must be attached to the order for the applicant's release. I therefore order as follows:

1. That the applicant shall reside at his aforesaid family home at Ndirande;
2. That he shall furnish two sureties who are his close relatives each of whom will bound in the non-cash sum of K20 000, each of such sureties to be examined by the Registrar;
3. That he shall not leave Blantyre District of abode without first informing the Chief State Advocate or his representative;
4. That he surrenders his travel documents, if any, to the police.

The foregoing conditions shall automatically fall away if trial of the applicant for the murder charge does not commence by 27th May 2011.

Delivered in chambers this 6th day of May 2011.


R Mbvundula
JUDGE