

Fadweck Mvahe v Republic

Summary

Court:	Supreme Court Of Appeal
Bench:	His Honourable Justice L Unyolo, The Honourable Justice J Kalaile SC JA, The Honourable Justice Mtegha, SC, JA, The Honourable Justice Mtambo, SC, JA, The Honourable Justice Tembo, SC, JA
Cause Number:	MSCA Criminal Appeal number 25, 26 and 27 of 2005
Date of Judgment:	November 16, 2005
Bar:	Mr. Chiphwanya, Counsel for the Applicants Mr. Mtata, Counsel for the Respondent

The Appellants appealed to the Malawi Supreme Court of Appeal against the High Court's refusal to grant them bail after being charged with murder. The three separate appeals were consolidated due to their similar nature and the common issues raised. The High Court had refused two of the applications on the grounds that the accused had failed to show exceptional circumstances, while the third was refused as it would not be in the interests of justice to grant bail. The central legal issue was the correct interpretation of the constitutional right to bail under section 42(2)(e) of the Constitution in relation to murder suspects, and whether the requirement to prove "exceptional circumstances" was a valid limitation on

that right.

The Court noted that there were two conflicting views on the matter from previous Supreme Court decisions. One view, from *McWilliam Lunguzi v The Republic*, held that the discretion to grant bail for murder suspects is rarely exercised and only upon proof of exceptional circumstances. The other, from *John Tembo and 2 Others v the DPP*, held that courts have a real discretion to grant bail unless the interests of justice would be prejudiced, with the onus on the State to prove this.

The appeals were allowed. The Court held that the constitutional right to bail is not absolute but is subject to the interests of justice, and that the burden is on the State to prove that it would not be in the interests of justice to grant bail. The Court found that the requirement for murder suspects to prove "exceptional circumstances" was an unconstitutional approach and should no longer be followed. The Court clarified that the "exceptional circumstances" test is only applicable to applications for bail after conviction. The Court directed the Appellants to bring fresh bail applications to the High Court to be dealt with under the new procedure pronounced in this judgment.