

Mc William Lunguzi v Republic

Summary

Court:	Supreme Court Of Appeal
Bench:	The Honourable, The Chief Justice Banda, JA, The Honourable Justice Villiera, JA, The Honourable Justice Chatsika, JA
Cause Number:	MSCA Criminal Appeal Number 1 of 1995
Date of Judgment:	August 21, 1995
Bar:	Mr. Gustave Kaliwo, Counsel for the Appellant Mr. Mwenelupembe, Counsel for the Respondent

The Director of Public Prosecutions appealed to the Malawi Supreme Court of Appeal against a High Court ruling that granted bail to the Respondent. The Respondent was charged with three counts, the most serious being accessory after the fact to murder, which is punishable by life imprisonment. The Respondent had initially been denied bail by the Chief Resident Magistrate's Court. The DPP's appeal was based on the grounds that the High Court judge had misdirected himself on the burden and standard of proof, arguing that the State only needed to prove its case on a balance of probabilities and that the Respondent, in a murder case, had the burden of showing special circumstances to justify bail.

The Court held that the constitutional right to bail is not an absolute right and is subject to the discretion of the courts, which can refuse bail if the interests of justice so require. The Court affirmed that the High Court was correct in its view that the burden of proof rests on the prosecution to show why bail should not be granted. However, the Court also held that for serious offences such as murder, the discretion to grant bail is rarely exercised and only in the rarest of cases upon proof of exceptional circumstances. The Court reasoned that a person's popularity, prominence in the community, or a possible defence do not constitute exceptional circumstances. The Court's finding was that the High Court's decision to grant bail was in error. The appeal was allowed and the High Court ruling was reversed.