

Nixon Finiyasi v The State

Summary

Court:	High Court of Malawi
Registry:	Criminal Division
Bench:	Honourable Justice Zione Ntaba
Cause Number:	Bail Application number 157 of 2020
Date of Judgment:	June 15, 2023
Bar:	Mr. P. Chinguwo, Counsel for the Applicant Ms. N. Longwe, Counsel for the Respondent

The Applicant, who was facing a murder charge, sought a re-application for bail after the State failed to comply with a court order to commence his trial within 120 days. The Applicant argued that his continued detention constituted an abuse of his human rights and that his circumstances had changed due to the State's non-compliance. The State did not object to the re-application for bail. The Court, in considering the application, reminded itself of a medical report from 11 April 2022, which stated that the Applicant posed a high risk of harming his family and community due to easy access to cannabis, which triggers verbal and physical violence. The Applicant's mother offered to undertake responsibility to ensure he complied with bail conditions and abstained from cannabis use.

The Court held that the constitutional right to bail is not absolute and is subject to the interests of justice. It weighed the Applicant's right to liberty and fair trial against the public's right to safety, as highlighted by the medical report. The Court found the continued remand of the Applicant had become unlawful, as his detention had exceeded two years without prosecution. Furthermore, fair trial principles require a person to be tried within a reasonable time, which had not been the case. The Court expressed disappointment with the State's repeated failure to prosecute. Taking into account the Applicant's mental health condition and the State's lack of objection, the Court released the Applicant on bail, subject to a number of stringent conditions to mitigate the risk he posed to the public and to ensure his well-being. The bail conditions included a cash bond, provision of sureties, and a requirement to register for and adhere to an outpatient mental health treatment plan at Zomba Mental Hospital