

The Republic v Annie Debra Mumba

Court:	High Court of Malawi
Registry:	Criminal Division
Bench:	Honourable Justice Mzonde Mvula
Cause Number:	Homicide Criminal Case No. 157 of 2020
Date of Judgment:	July 28, 2025
Bar:	Kamwendo and Senior State Advocate Kubwalo, Counsel for the accused

Head Notes

Criminal Procedure - Bail Pending Appeal - Discretion of the High Court - Court's discretion to grant Bail Pending Appeal is guided by exceptional, special, or unusual circumstances.

Criminal Procedure - Bail pending appeal - Exceptional circumstances - Likelihood of success on appeal and substantial service of sentence must coexist.

Criminal Procedure - Bail pending appeal - Exceptional circumstances - The categories of what constitutes exceptional circumstances are not closed.

Criminal Procedure - Bail - Bail pending appeal - Compliance with bail conditions during trial is not a sufficient ground for granting bail after conviction.

Summary

The Applicant sought bail pending appeal to the Supreme Court of Appeal after being convicted of murder and sentenced to 53 years' imprisonment. The application was premised on the argument that her appeal had a high likelihood of success, citing several grounds of appeal, and that she had complied with her bail conditions during the trial. The Applicant contended that the likelihood of success alone was a sufficient "exceptional and unusual circumstance" to warrant bail. The Republic, opposing the application, argued that the Applicant, no longer presumed innocent, must demonstrate exceptional and unusual circumstances to be granted bail. They maintained that the grounds for bail, such as a high probability of a successful appeal or the risk of serving the full sentence before the appeal is heard, must exist concurrently.

The issue before the Court was whether the Applicant had demonstrated exceptional, special, or unusual circumstances to justify granting her bail pending the hearing and determination of the appeal in the Supreme Court.

The Court, in its reasoning, affirmed that while the categories of "exceptional circumstances" are not closed, the established principles require more than a single compelling factor. It was noted that the principal factors are the likelihood of the appeal succeeding and the risk of the convict serving a significant part of their sentence before the appeal is heard. The Court proceeded to hold that the grounds of appeal did not demonstrate a strong prospect of success and that, given the lengthy sentence, she would not serve a substantial portion before her appeal was heard. The court further held that the presumption of innocence no longer applied to the Applicant, who had been found guilty after due process. Accordingly, the Court dismissed the application for bail pending appeal in its entirety, finding that releasing

the Applicant would undermine the criminal justice system and the public interest in ensuring that those found guilty serve their sentences.

Legislation Construed

Criminal Procedure and Evidence Code (Cap. 08:01) (s 359)

Penal Code (Cap. 07:01) (s 209).

Judgment

1.0 Introduction

1.1 On 31st October 2024, this Court convicted Annie Debra Mumba and sentenced her to 53 years' imprisonment for the offence of murder of her husband Professor Peter Mumba, contrary to Section 209 of the Penal Code.

1.2 The convict, now turned applicant, filed a notice, together with grounds of appeal, to the Supreme Court. She applies to this Court for bail pending the hearing and determination of her appeal before the apex court.

1.3 The application was heard *inter partes*. It is a matter we dispose of as follows:

Issues

1.4 Whether this Court may grant bail to the applicant pending the hearing and determination of the appeal in the Supreme Court.

Submissions by the parties The applicant

1.5 The applicant based her application on the possibility that her appeal may succeed. Her grounds of appeal include:

1.5.1 That this Court erred in law by convicting her on evidence that did not meet requisite standard of proof beyond reasonable doubt;

1.5.2 That this Court erred in law by shifting the burden of proof to her and subjecting her evidence to the standard of proof beyond reasonable doubt;

1.5.3 That this Court erred in law and in fact by basing her conviction on evidence that was speculative in nature;

1.5.4 That this Court erred in law and in fact by basing her conviction on inadmissible evidence given from the bar and not the witness box;

1.5.5 That this Court erred in law by basing her conviction on the evidence that was never before this Court;

1.5.6 That this Court erred in law by failing to resolve the state's failure to call material witnesses against the state and in favour of the her;

1.5.7 That this Court erred in law by convicting her on a different case as evidence brought by the prosecution;

1.5.8 That this Court erred in law by convicting her on the basis of circumstantial evidence that was not sufficient to exclude other reasonable explanation;

1.5.9 That this Court erred in law and in fact when it convicted her on the ground that she delayed taking the deceased to the hospital when there was no evidence of any delay;

1.5.10 That the sentence of 53 years' imprisonment with hard labour was manifestly excessive in the light of the circumstances of the case.

1.6 The applicant cited Section 359 of the Criminal Procedure and Evidence Code, the Code, arguing that based on this section, the High Court may in its discretion in any case in which an appeal to the Supreme Court is filed, grant bail pending the hearing of appeal.

1.7 Citing **Chihana v. the Republic Criminal Appeal No. 9 of 1992 (unreported)**, from which case, the applicant argues that based on holding by Chatsika J.A. that the exceptional and unusual circumstances which include the likelihood of success of an appeal or the risk that the appeal will be heard at the time that the sentence has already been served, have to exist concurrently in order for the applicant to be granted bail pending appeal.

1.8 The applicant also submitted before this Court the holding by Unyolo J.A. which agreed and fully applied the decision of **Chihana (supra)** in the case of **Kamaliza and others v Republic (1993)16(1) MLR**, without any qualification.

1.9 The applicant argues that Courts may still grant bail pending appeal where one of the exceptional and unusual circumstances is standing on its own. With regard to this argument the applicant has quoted and relied the obiter dictum in the case of **Watton (1979) 68 CR App R, 296**. We shall not reproduce it because the gist of which has already been captured above.

1.10 By extension, it remains her argument that she was on bail during her entire trial, where at all material times, she complied with her bail conditions. Consequently, she submits that she will continue to abide by bail conditions as she did previously, if allowed to bail.

1.11 The applicant submits that the likelihood that the appeal may succeed is a ground enough upon which this Court could consider granting the applicant, bail pending appeal.

2.0 Response by the Republic

2.1 The Republic vehemently opposes this application. Their point of departure is that Court has discretion whether or not to grant bail pending appeal. Further, that it must also be noted that the applicant is no longer a free woman, having lost her freedom through conviction after trial. To this end, for the freedom to be granted back, she must prove exceptional and unusual circumstances.

2.2 Unusual, special or exceptional circumstances include meaningful grounds, that the appeal is likely to succeed or that the appellant would have served the full term before the appeal is determined. In this regard, these factors must run concurrently. The Republic has raised this argument placing reliance on their interpretation to the case of **Chihana v Republic Criminal Appeal No. 9 of 1992 (unreported)**.

2.3 The Republic further state that applicant was sentenced to 53 years' imprisonment. Her sentence was only handed down on 31st October 2024. She has not even served a quarter of her sentence, although half would make a compelling argument from the position of applicant on this score. That being said, the Republic is fortified in the position that it is unlikely that she will have served her full sentence before the appeal is determined.

2.4 Looking at the grounds of appeal filed by the applicant, it is unlikely that the appeal will succeed.

2.5 There are no exceptional, special or unusual circumstances warranting the release of applicant on bail pending appeal and staying her sentence. Therefore, it will not be in the interest of justice to release the applicant on bail pending appeal. This is the position by the Republic.

3.0 Exposition of the legal issues in the determination

3.1 In determining an application for bail pending appeal, it is imperative to note that bail is granted, subject to the interests of justice, at the discretion of the Court under section 359 of the Code. This provision provides:

The High Court may in its discretion in any case in which an appeal to the Supreme Court of Appeal is filed grant bail pending the hearing of an appeal.

3.2 The guiding principle applicable in determining applications of bail pending appeal, is that the application should only be granted where there are exceptional, special or unusual circumstances. Courts have held the following as amounting to exceptional, special or unusual circumstances; the likelihood of the appeal succeeding; the risk of the convict serving a full sentence before the hearing and determination of the appeal. See, **Alfred v The Republic Miscellaneous Criminal Application no. 6 of 1993** and **Dr. Thomson Mpinganjira v the Republic MSCA Criminal Case No. 9 Of 2021.**

3.3 However, it has to be noted, that, exceptional, special or unusual circumstances are not only confined to, either the likelihood of the appeal succeeding, or the risk of the convict serving her full sentence before the hearing and determination of the appeal. See the case of **Joseph Kapanga and Annie Kapanga v. The Republic MSCA Criminal Appeal No 16 Of 2017**. In that case Twea JA observed that the chances of the appeal succeeding and that the convict would serve the full sentence before the hearing and determination of the appeal, are only, but examples of unusual or special or exceptional circumstances.

3.4 The Judge further observed that the categories of what amount to unusual or special or exceptional circumstances, is not closed. It is open to the courts to develop others. This court is bound by this reasoning of Twea JA. In this regard, we must carefully assess whether such exceptional circumstances exist in the present application, to exercise judicial discretion favourably for the applicant.

3.5 The application relies heavily on one ground to allow her to bail pending appeal. This stems from their postulation that from where they are standing, the appeal is likely to succeed. She argues that this ground alone is enough to justify bail pending appeal, citing **Watton [1979] 68 Cr. App. R. 293.**

3.6 I have considered the decision in **Watton**. While it recognizes judicial discretion, it does not stand for the proposition that one ground alone must suffice as a general rule. The Court in **Watton** emphasized that bail pending appeal must be granted in exceptional circumstances. The expectation remains that both factors: the likelihood of success and the potential service of a substantial part of the sentence ought to exist together. Unless there is another compelling or humanitarian reason that makes the case truly exceptional, such applications ought not to be granted willy-nilly. The categories are indeed open ended. See **Kapinga and Kapinga v Rep (supra)**.

3.7 Against the foregoing, the case had to be very compelling, if one ground must suffice. The bottom line, is that there must be exceptional circumstances warranting release from prison on bail pending appeal. This is more so that criminal justice must retain full sanction where those who are sent to prison after due process, remain there as a tenant of rule of law. This is the hallmark of democracy where laws are obeyed

including by the affluent including those who think prison is not their home, despite the wrong they did in society. Little wonder, others use failing health to make a compelling reasons, to ground this application. In that case, medical certificates and doctor certification ought to be attached. In this vein, seriously failing health is a ground on these categories.

3.8 We must not lose sight of the cardinal principle in criminal law, that those who are found guilty must do time behind bars in consequence of their social wrong. This is because criminal law is publicly enforced, and the sentences imposed reflect public interest to prevent crime. Prison is for law breakers, whose existence, maintains order in society. Tying this to chances of success on appeal, the *actus reus*, which took the form of calculated omission to save a life which was deliberately done to feed the *mens rea*, the verdict will remain. As such, the victim of and the effect of the crime on the direct and the indirect victim have to be mirrored as well. We should not just look at plight of Anne Debre Mumba. There is the Republic on the other hand we must also consider to determine this ruling, subject to the interests of justice.

3.9 A life of a professor was lost under circumstances that a cold calculated wife executed almost flawlessly, but for *algor mortis*, *alias* unusual coldness of the body as discovered by the doctor who received the dead body, the applicant labored to argue without medical reason that was still alive, despite knowing what she had done to her victim. This places the convict firmly guilty over the death of Professor Mumba be it by direct evidence or circumstantially so, using last seen doctrine. Looking at the questionable circumstances of death of a person who was very healthy prior to the death, the ground that she has good chances of success is indeed clutching at straws. It is chasing the wind, a desperate attempt to regain freedom, not when the well

analyzed judgment in this matter, places her a deserving candidate of a lengthy prison term.

3.10 Accordingly, a 53 years' imprisonment term was generous in the circumstances given the convict sophisticatedly concealed the death, but for the bird called *algor mortis* which exposed the *actus reus* and *mens rea* in the convict. The applicant has not served not even a quarter portion of this otherwise generous sentence. By the time she has her appeal heard, she will not have served even half of her deserving sentence. Having perused her grounds of appeal, this Court is not persuaded at all that the appeal stands a high likelihood of success. If anything, with the passage of time, the quality of the decision is slowly oozing accuracy of mathematics, like larva down a mountain slope, from a volcanic eruption. If we may add, some of the grounds of appeal also raise questions of law and fact that were already comprehensively addressed in the judgment.

3.11 The argument that the applicant was previously compliant with bail conditions during trial, while commendable, is not sufficient to tip the balance in favour of release at this stage. The facts have been tried in full, she no longer enjoys presumption of innocence. She was rightly found guilty. Any attempt to go out from prison on bail pending trial is mockery to criminal justice system which retains in prison, those who committed this heinous crime. This court will be the last to misuse bail pending appeal, allowing criminals evade the sanction of punishment, releasing those who deserve to be in the gallows, though ill premised applications.

4.0 Conclusion

4.1 Against the foregoing, this Court finds that while some cases deserve bail pending appeal, there are neither exceptional, special nor unusual circumstance warranting the exercise of discretion in favour of the convict. There is neither a demonstrably strong prospect of success nor likelihood that sentence will be substantially served before her appeal is heard.

4.2 The application by Anne Debre Mumba crumbles like a house built on sinking sand, waved down by interests of oceanic justice. Simply, application for bail pending appeal is hereby **dismissed in its entirety**.