

**IN THE HIGH COURT OF MALAWI  
LILONGWE DISTRICT REGISTRY**

**MISCELLANEOUS CRIMINAL CASE NO. 154 OF 2009**

**BETWEEN**

**WATSON MASELEKA**

**AND**

**THE REPUBLIC**

**CORAM** : **HON. JUSTICE CHINANGWA, J.**  
: Mr. L. Sheriff, Counsel for the Applicant  
: Absent, Counsel for the Respondent  
: S. Bazilio, Court Interpreter

**RULING**

**CHINANGWA, J.**

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The applicant Watson Maseleka applies for bail. It is being prosecuted by counsel Sheriff.

Applicant is from Village Headman Macheke, T/A Santhe, District Kasungu. He was arrested on 15<sup>th</sup> May, 2008 on an allegation of murder. It is deposed in the

affidavit of counsel Sheriff that since his arrest, the State has not brought him before court to be dealt with according to law.

The State has not complied with Section 42(2)(b) of the Constitution. Hence application for bail under Section 42(2)(e) of the Constitution.

Counsel Nita, for the State opposed the application. However, the State did not file affidavit or skeleton arguments. The excuse is that he was given the file yesterday to stand-in for counsel Kalebe. The State is praying for 90 days within which period it would try to prosecute applicant.

The issue as I see it, is failure on the part of the State to comply with Section 42(2)(b) of the Constitution. Section 42(2)(b) of the Constitution provides:

*“42(2). Every person arrested for, or accused of, the alleged commission of an offence shall, in addition to the rights which he or she has as a detained person, have the right -*

*(b) as soon as it is reasonably possible, but not later than 48 hours after the arrest, or if the period of 48 hours expires outside ordinary court hours or on a day which is not a court day, the first court day after such expiry, to be brought before an independent and impartial court of law and to be charged or to be informed of the reason for his or her further detention, failing which he or she shall be released;”*

The applicant was arrested on 15<sup>th</sup> May, 2008. Following the arrest, the State was obliged to bring applicant before a court of law within 48 hours or within a reasonable time. Kasungu has a district court presided over by two First Grade Magistrates. Therefore failure of the State to bring applicant was not due to non availability of a court station in Kasungu.

When Section 42(2)(b) of the Constitution is carefully read it would be observed that where it is impossible to bring a person within 48 hours, such person may be brought on the next day court is in session. One would wonder whether from 15<sup>th</sup> May, 2008 to the date this application was filed 2<sup>nd</sup> September, 2009 it was impossible to bring applicant before court in compliance to section 42(2)(b). Even the issue of lack of human capacity on the part of the State is not a nice excuse.

In the circumstances, the period of 15 months, is an inexcusable delay not to be condoned. The applicant is released unconditionally. It is so ordered.

Application allowed.

**PRONOUNCED** in Chambers on this 1<sup>st</sup> October, 2009 at Lilongwe.

R.R. Chinangwa

**J U D G E**

