



## Chimwemwe Mphembedzu v. The Republic

Bail Case No. 70 of 2011

**Country:** Malawi

**Region:** Africa

**Year:** 2011

**Court:** High Court

**Health Topics:** Health care and health services, Prisons

**Human Rights:** Right to due process/fair trial

### Facts

This case considered whether a prisoner in ill health should be released from prison. The applicant was serving time in prison for murder. He argued that he should be released on bail given his ill health and that the delay in bringing his case to trial was unreasonable. He had been imprisoned since October 2007 and, at the time of the case (June 2011), had still not been tried.

The court was asked to determine whether, under Section 13(c) of the Constitution of the Republic of Malawi, which requires the state to provide adequate health care to its citizens, including prison inmates, the applicant was entitled to be released on bail.

### Decision and Reasoning

The Court declined to grant bail to the applicant based on Section 13(c) of Malawi's Constitution because the evidence submitted by the applicant regarding his ill health was not properly before the Court. The Court did, however, state that, if the evidence had been properly submitted, it would have sufficed to show the ill health of the applicant and warrant his release. This was because the evidence showed that the continued detention of the applicant would mean his health would continue to deteriorate and that he needed to undergo an urgent investigation to identify the cause of his symptoms and begin the appropriate treatment.

The Court held that the prisoner could be released on bail given the undue delay in bringing his case to trial. The Criminal Procedure and Evidence Code of Malawi provided that the maximum period a person accused of certain crimes could be held before trial was ninety days. Because the applicant had been detained for multiple years and his trial had still not commenced, he was granted bail.

### Decision Excerpts

"And since we have the following constitutional provision in place, a provision which clearly requires the State to make adequate provision for its citizens coupled with the provisions of the Prisons Act (Cap 9:02) This Court thus finds Counsel's reference to the provisions from the International Covenant on Economic, Social and Cultural Rights (ICESCR), the African Charter on Human and Peoples' Rights (the African Charter) or (the Banjul Charter); the United Nations Standard Minimum Rules for the Treatment of Prisoners Principal 22 (2) etc, for the purposes of this Application a futile exercise. The matter would have been otherwise had there been no local legislation obligating the State to provide adequate health care commensurate with the health needs of its citizens and the international standards of health." Page [k1] 2.

"However, since this Ruling is merely an academic exercise it is this Court's view that had the Medical Reports been properly before this Court the same would, no doubt, have sufficed as evidence of the ill health of the Applicant in terms of Section 6 (e), aforesaid, warranting the release of the Applicant. As a matter of fact the Reports show that the continued detention of the Applicant will only mean that his health will continue to deteriorate, the one Report also shows that the Applicant needs to undergo urgent investigation to identify the cause of his symptoms so that appropriate treatment can be initiated." Page 2.