

This is a consolidated ruling on the three separate applications i.e Motion No. **M/6659/20**, **M/6658** and **M/299** both filed by same counsel seeking Bail of the three Defendants.

The affidavit in support of three applications were deposed to by One Abubakar Mohammed an Intern Student in the Law Firm of the Counsel to the Applicants.

It is the deposition of the 1st Applicant that he was arrested on the 5th December, 2017 by the Respondents on the suspicious of conspiracy and armed robbery.

That he was invited by the 2nd Defendant for a wedding where he was arrested and detained since 2017.

The 2nd & 3rd Defendants have similar facts in their affidavit as deposed to by the 1st Defendant.

A written address was filed in compliance with law and procedure wherein a sole issue was formulated for

determination to wit; *whether or not the 1st, 2nd and 3rd Applicants are entitled to bail.*

Arguing on the above, learned counsel contended that the right to bail as sought by the Applicants is constitutional in view of the constitutional presumption of innocence as provided for under section 36 (5) of 1999 Constitution of FRN as amended.

Learned counsel submit further that, when a person who is suspected to have committed an offence or is accused of an offence is arrested, he shall be subject to the provisions of the law entitled to bail.

Court was finally urged to grant the Applicants bail in the interest of justice.

Respondent failed to file counter affidavits in opposition to the application.

I have gone through the application under consideration which seek the court's discretion in granting the

Accused/Applicants bail pending the determination of the substantive case.

I must state here that by virtue of section 35(4) and 36(5) of the 1999 constitution as amended, an accused person is entitled to his unfettered liberty and is presumed innocent until proven guilty and the onus is on the prosecution to prove that an accused person is not entitled to bail. However, the presumption of innocence and the right to liberty as enshrined in section 36 (5) and 35 (4) respectively of the constitution can only be invoked where there is no prima facie evidence against the accused. It would be foolhardy to allow the accused on bail because the constitution could not have envisaged a situation where accused person of every shade could be allowed bail just at the mention of the magic words of presumption of innocence. ***ALAYA VS STATE (2007) 16 NWLR (Pt. 1061) 483 at 505 paragraph D – F.***

The main function of bail is to ensure the presence of the accused at the trial. So if there is any reason to believe that the accused is likely to jump bail, the bail will properly be refused by the court in exercise of its discretion in dealing with the application. ***SULEMAN VS COP (2008) 8 NWLR (Pt. 1089) 298.***

The accused persons were arraigned for capital offence of armed robbery and criminal conspiracy. The provision of the law makes it clear that bail is not automatic. The court may release an accused/Applicant on bail upon some conditions stipulated under the law. ***COP VS SULEMAN (Supra)*** Thus in considering whether to grant or refuse bail to an accused person, the court is guided by the following factors:-

- i. Nature of the charge
- ii. The severity of the punishment in the event of conviction.

- iii. The strength of the evidence by which the charge is supported.
- iv. The criminal record of the accused, if any.
- v. The likelihood of the repetition of the offence.
- vi. The probability that the accused may not surrender himself for trial, thus not bringing himself to justice.
- vii. The risk that if released, the accused may interfere with witness or suppresses the evidence likely to incriminate him and
- viii. The necessity to procure medical treatment of social report. *OHIZE VS COP (2014) LPELR 23012 (CA).*

Indeed, application for bail pending trial is generally a matter of course unless some circumstances militate against the grant of it.

The circumstances here are the severity of punishment upon conviction and the likelihood of jumping bail. Even though, Prosecution failed to file counter affidavit as stated earlier, bail being subject to exercise of discretion, court then ought to give consideration to the other competing factors in view of the fact that the offence in issue ordinarily not bailable. I withhold my discretion in favour of the Applicant. Bail is refused and dismissed. I order for accelerated hearing.

Justice Y. Halilu
Hon. Judge
21st May, 2020

APPEARANCES

OCA IBE – for the Defendant with T.T.S Akubo

Prosecution not in court.