

**IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY  
IN THE ABUJA JUDICIAL DIVISION  
HOLDEN AT MAITAMA – ABUJA**

**BEFORE HIS LORDSHIP: JUSTICE SALISU GARBA  
COURT CLERKS: FIDELIS T. AAYONGO & OTHERS  
COURT NUMBER: HIGH COURT TWO (2)  
CASE NUMBER: FCT/HC/M/5223/2020  
DATE: 21<sup>ST</sup> FEBRUARY, 2020**

**BETWEEN:**

**FEDERAL REPUBLIC OF NIGERIA - COMPLAINANT**

**AND**

**1. GRACE NKOYO NWAUZOR  
2. OKORIE TOBIAS OTUBAKU } - DEFENDANTS**

2<sup>nd</sup> Defendant in court while 1<sup>st</sup> Defendant absent.

E.K. Agbili for the prosecution appearing with Ayo Olubumi Esq.

S.P.C. Ugwu for the 1<sup>st</sup> Defendant.

S.A. Birkisha for the 2<sup>nd</sup> Defendant.

Prosecution's Counsel – The matter is slated today for ruling and we are ready to take same.

1<sup>st</sup> Defendant's Counsel – The 1<sup>st</sup> Defendant has been remanded at Keffi Correctional Centre. They may be on their way.

Court – There is no guarantee that the Correctional Centre is producing the 1<sup>st</sup> defendant in court today. The matter is for ruling and this is the decision.

## **R U L I N G**

This ruling is predicated on an application on notice dated 12/2/2020 brought pursuant to Section 6(6) & 35, 36(5) of the 1999 Constitution of Federal Republic of Nigeria (as amended), Section

158 and 159(2) of the Administration of Criminal Justice Act (2015) and under the inherent jurisdiction of this Honourable Court.

The application is seeking for the following orders:

1. An Order of this Honourable Court setting aside the Order of this Court made against the 1<sup>st</sup> Defendant/Applicant on the 20<sup>th</sup> Day of January, 2020 revoking the bail granted to her in respect of trial in charge No. CR/288/16.
2. An Order of this Honourable Court restoring the bail terms earlier granted to the 1<sup>st</sup> Defendant/Applicant in this Charge No. CR/288/16.

**ALTERNATIVELY:**

3. An Order of this Honourable Court admitting the 1<sup>st</sup> Defendant/Applicant to bail based on the terms earlier granted to the 1<sup>st</sup> Defendant in this Charge as this Honourable Court may direct pending the conclusion of hearing and determination of this Charge No. CR/288/16 before this Honourable Court.
4. Such Further or other orders as this Honourable Court may deem fit to make in the circumstances.

The grounds upon which this application is brought are as follows:

1. This Honourable Court previously admitted the 1<sup>st</sup> Defendant/Applicant to bail pending the hearing and determination of the Charge No. CR/288/16.

2. The 1<sup>st</sup> Defendant/Applicant perfected her bail conditions and was always present in court to defend the Charge against her before this Honourable Court.
3. The 1<sup>st</sup> Defendant was struck by strange ailment and travelled to undertake Trado-medical treatment in her village, Mbaise, Imo State and could not return to Abuja before the court hearing date of 20<sup>th</sup> January, 2020.
4. The 1<sup>st</sup> Defendant could not reach out to the Counsel to mobilize for appearance in court.
5. When the 1<sup>st</sup> Defendant arrived in court, she was informed by the officials of the Court that the day's trial has been conducted and that her bail has been revoked and an order for her arrest has been made by the trial court.
6. The 1<sup>st</sup> Defendant was faced with an unusual and unforeseen circumstance which prevented her from being in court and never contemplated breaching the terms of her bail.
7. The 1<sup>st</sup> Defendant has always being in Court and the last proceedings was the only day the 1<sup>st</sup> Defendant was absent in court.
8. That this matter has come up on the 27/3/2017, 27/4/2017, 5/10/2017, 15/11/2017, 23/1/2018, 1/3/2018, 23/4/2018, 24/6/2019, 25/9/2019 and has been consistent in court.
9. The Court has the vires to set aside the Order of this Honourable Court in this case which was made against the 1<sup>st</sup> Defendant or in alternative, admitting the 1<sup>st</sup> Defendant to

bail based on earlier terms previously granted this Honourable Court.

In support of this application is a 5-paragraph supporting affidavit dated 12/2/2020 deposed to by Chris Nwuazor the husband of the 1<sup>st</sup> Defendant/Applicant. Reliance is placed on all the paragraphs of the affidavit.

In compliance with the rules of this court, learned counsel to the 1<sup>st</sup> Defendant/Applicant filed 7-page written address wherein counsel distilled a lone issue for determination, to wit:

***“Whether it is in the interest of justice, equity and fairness to grant the prayers sought in this application in the circumstances of this case”***

On this sole issue, it is the submission that every court has inherent powers to set aside its orders, decision and or judgment obtained by on a wrong assumption. See Supreme Court case in FIRST BANK OF NIGERIA PLC v TSA INDUSTRIES LTD (2012).

Submit that in the instant case, the 1<sup>st</sup> Defendant was held up in traffic while on her way to court which prevented her from arriving in court on time. At the time she arrived in court, this court has already sat and the bail previously granted to the 1<sup>st</sup> Defendant has been revoked for non appearance in court.

It is also the submission that it is settled in our criminal law jurisprudence that every person charged with a criminal offence is presumed to be innocent until he is proved guilty. See Section 36(5) of the Constitution of the Federal Republic of Nigeria 1999

(as amended) and the cases of NWANGWU v DURU (2002) 2 NWLR Pt 751; DOGO v COMMISSIONER OF POLICE (1980) 1 NCR, JOHNSON v LAFADEJU (2002) 8 NWLR (Pt 768) 192 at 206, SAIDU v THE STATE (1982) 4 SEC at 69.

Further submit that the grant or refusal of bail is at the discretion of the court. Learned counsel refers to case of DAN BABA v STATE (2002) 14 NWLR (Pt 687) where the Court of Appeal held that:

***“The usual conditions or matters which the court considers in its exercise of the discretion to grant or refuse bail are as follows:***

- (a) Whether the proper investigation of the offence would be prejudiced if the accused person is granted bail and whether there is a serious risk of the accused person escaping from justice by jumping bail.***
- (b) The nature of the offence or charge which the accused person is facing before the court and the risk of his interference in the prosecution of the case.***
- (c) The strength of evidence against the accused person”***

In conclusion, learned counsel to the 1<sup>st</sup> Defendant/Applicant urge the court to exercise its discretion in favour of the Applicant by granting her prayers and set aside its earlier order revoking the bail.

In opposition to this application, learned counsel to the prosecution/Respondent filed 8-paragraph counter affidavit

dated 17/2/2020 deposed to by Iliya Markus, an officer of the ICPC.

Learned counsel to the Prosecution/Respondent filed 4-page written address dated 17/2/2020 wherein counsel distilled an issue for determination, to wit:

***“Whether it will be in the interest of justice to grant the 1<sup>st</sup> Defendant/Applicant bail”***

It is the submission that the Applicant is not entitled to be granted bail again having abused such rare privilege granted to her by this Honourable Court. Section 162 of the Administration of Criminal Justice Act 2015 (ACJA) provides thus: A Defendant charged with an offence punishable with imprisonment for a term exceeding three years shall on application to the court be released on bail except in any of the following circumstances:

- (a) Where there is a reasonable ground to believe that the Defendant will when released on bail, commit another offence.
- (b) Attempt to evade trial.
- (c) Attempt to influence, interfere with, intimidate witnesses, and or interfere in the investigation of the case.
- (d) Attempt to conceal or destroy evidence....”

Submitted that the 1<sup>st</sup> Defendant/Applicant has breached all the provisions of the said Section 162 of ACJA, the Applicant has committed several offences outside the one she is undergoing

trial. There are several petitions against the Applicant pending in ICPC of which investigation is currently ongoing.

Further submit that the criminal record of the Applicant does not entitle her to bail; it took ICPC two years to effect her arrest with the help of Nigeria Navy after declaring her wanted.

In conclusion, learned counsel to the Prosecution/Respondent urge this honourable court to discountenance the submission of the 1<sup>st</sup> Defendant/Applicant and refuse her bail and instead remand the Applicant in Correctional Service to enable her stand trial and grant accelerated hearing to this matter.

With the leave of court, the 1<sup>st</sup> Defendant/Applicant's counsel responded orally on points of law to the counter affidavit of the Prosecution/Respondent's counsel. Learned counsel to the 1<sup>st</sup> Defendant/Applicant submits that bail is at the discretion of the court and the courts are enjoined to grant application for bail in favour of the Defendant. The offence for which the Defendant was charged was a bailable offence. Learned counsel refers to the case of SAIDU v THE STATE (1982) SCR Pg 69 and Section 36 of the 1999 Constitution of Federal Republic of Nigeria (as amended) and Section 158 and 159(2) of ACJA and urge the court to discountenance the submission of the Prosecution/Respondent's counsel as they are unreliable and grant the application for bail to the 1<sup>st</sup> Defendant/Applicant.

On the part of the court, I have carefully considered the processes filed and the submissions of learned counsel on both sides, it is not

in doubt that the granting of bail is at the discretion of the court but such discretion must be exercised judicially and judiciously.

In paragraph 4C of the affidavit in support, it is deposed that 1<sup>st</sup> Defendant was struck by strange ailment and travelled to undertake Trado-medical treatment in her village in Mbaise, Imo State and could not return to Abuja before the court hearing date of 20<sup>th</sup> January, 2020. It is trite law that the only way you can prove ill-health is by tendering of a Medical Certificate.

In paragraph 6b, c, d, f, h, i, j, k, l and m of the counter affidavit, it was deposed that this Honourable Court had on the 30<sup>th</sup> Day of September 2016 granted the 1<sup>st</sup> Defendant/Applicant bail pending the determination of this case.

On the 20<sup>th</sup> Day of January 2020 the 1<sup>st</sup> Defendant/Applicant and her counsel were not in court and no reason was adduced for their absence resulting to the court revoking her bail. The Respondent instructed the surety to produce her in line with the order of court. The surety solicited the assistance of Nigerian Police Force (SARS) who used their technology to detect the location of the 1<sup>st</sup> Defendant/Applicant in Abuja and promptly arrested her using undercover agent, as a result of the horrible experience encountered by the surety in the arresting of the 1<sup>st</sup> Defendant/Applicant, the surety applied to withdraw as her surety and the court granted the application; while the 1<sup>st</sup> Defendant/Applicant was in the custody of the Complainant/Respondent she attempted to launder money using her account but was intercepted by security operatives.



Furthermore that while the 1<sup>st</sup> Defendant/Applicant is facing this trial before this Honourable Court, she has committed other offences resulting to various petitions written against her to ICPC. The ICPC is currently investigating these new petitions against the 1<sup>st</sup> Defendant/Applicant and from the antecedent of the 1<sup>st</sup> Defendant/Applicant, she has the tendency to abscond and avoid justice having displayed same proclivity in the course of investigation and that before the 1<sup>st</sup> Defendant/Applicant was arraigned before this Honourable Court, it took ICPC 2 years with the help of Nigeria Navy to arrest her and this was done after declaring her wanted by ICPC.

From the record of this court, it has been observed that the 1<sup>st</sup> Defendant/Applicant was granted bail by this court on the 30/9/2016. However, on the 20/1/2020 the 1<sup>st</sup> Defendant/Applicant was absent in court and no reason was advanced for her absence hence her bail was revoked by this court. To my mind the depositions in the counter affidavit are weighty/heavy allegations which the 1<sup>st</sup> Defendant/Applicant counsel did not respond to same.

It is settled law that evidence of the prosecution which is not contradicted or disputed by an accused is deemed to have been accepted or admitted by that accused person. See STATE v HARUNA (2017) LPELR 4335 C.A.

The true position is that the 1<sup>st</sup> Defendant/Applicant was granted bail by this court which she abused by refusing to appear in court on the 20/1/2020 for her trial for no reason at all.

In the circumstance, the application of the 1<sup>st</sup> Defendant/Applicant to set aside the order of this court made on the 20<sup>th</sup> Day of January, 2020 **OR** restoring the bail term earlier granted to the 1<sup>st</sup> Defendant/Applicant is hereby refused.

I order for accelerated hearing of the case while the 1<sup>st</sup> Defendant be remanded in Correctional Centre.

**(Sgd)**  
**JUSTICE SALISU GARBA**  
**(PRESIDING JUDGE)**  
**21/02/2020**

Prosecution's Counsel – We thank the court for the ruling. We are ready for day to day trial. We pray for short adjournment.

1<sup>st</sup> Defendant's Counsel – We ask for a date for continuation of hearing. The 1<sup>st</sup> Defendant is now in court.

2<sup>nd</sup> Defendant's Counsel – May we be guided by the convenience of the court.

Court – Case adjourned to 24<sup>th</sup> and 25<sup>th</sup> February, 2020 for continuation of hearing. Bail of the 2<sup>nd</sup> Defendants continues while I order that the 1<sup>st</sup> Defendant be remanded at Correctional Centre.

**(Sgd)**  
**Justice Salisu Garba**  
**(Presiding Judge)**  
**21/2/2020**