

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

BEFORE HIS LORDSHIP: HON. JUSTICE JUDE O. OKEKE, FICMC

ON WEDNESDAY THE 4TH MARCH, 2020

SUIT NO: FCT/HC/CR/157/2020

BETWEEN:

INSPECTOR GENERAL OF POLICE.....PROSECUTOR/RESPONDENT

AND

MR. JIDEOFOR CHINWUBA EZE 'M'.....DEFENDANT/APPLICANT

RULING

By this Motion on Notice with number: M/5797/2020 filed on 26th February 2020, the Defendant/Applicant ("The Applicant") seeks for an Order of Court admitting him to bail pending the hearing and determination of the charge against him.

The application is supported by a 13-paragraph affidavit deposed to by the Applicant and Written Address of his Counsel.

In opposition, the Respondent filed on 3rd March 2020 a 15-paragraph Counter Affidavit deposed to by Ubaike Chinwuba Eze along with the Written Address of its Counsel.

At the hearing today, Counsel for the parties adopted their Written Addresses as their oral submission for and against the application.

The learned Applicant's Counsel with the leave of Court responded orally on points of law.

I have carefully read and digested the averments in the affidavits of the parties and submissions of their learned Counsel. The cardinal issue that

calls for determination is whether or not the Applicant has made out a case to justify a grant of the reliefs sought.

The Administration of Criminal Justice Act 2015 (“ACJA”) has in Sections 158, 162 and 165 made provisions guiding grant of bail. Section 158 of the Act provides that a person who is suspected to have committed an offence and is brought before a Court is subject to the provision of that part, be entitled to bail. Section 162 on its part provides that 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: -

- (a). Where there is reasonable ground to believe he will where released on bail commit another offence.
- (b). Attempt to evade his trial.
- (c). Attempt to influence, interfere with, intimidate witness and/or interfere with the investigation of the case.
- (d). Attempt to conceal or destroy evidence.
- (e). Prejudice the proper investigation of the offence or
- (f). Undermine or jeopardize the objectives or the purpose or functioning of the Criminal Justice Administration, including the bail system.

By the above provision of Section 162 of the ACJA a Defendant charged with an offence punishable with imprisonment for a term exceeding three years shall be released on bail upon application except on proof of any of the circumstance set out under the Section. By the terms of the provision, the burden of proof is on the prosecution to establish the existence of any of the said condition for the Defendant to be denied bail. Where it fails so to do, the Defendant shall in the exercise of the Court’s discretion provided for in Section 158 of the Act be admitted to bail. Additionally, under Section 36(5) of the 1999 Constitution of Nigeria, every person charged with a criminal offence shall be presumed innocent until he is proved guilty.

In this case, the Applicant is charged with making utterance as threat to the life of the nominal compliance contrary to Section 397(b) of the Penal Code. The offence is not punishable with death but a term exceeding three

years to be precise seven years. In the circumstances, the provision of Section 162 of the ACJA is applicable.

The Applicant has averred in support of the application that he was granted administrative bail by the Respondent since April 2019 and he always made himself available when required. He reported to the complainant's office on 25th February 2020 as requested of him and he was detained and then arraigned in Court on 26th February 2020. That he has never jumped bail. He will not attempt to jump bail and will not evade his trial.

In its Counter Affidavit, the Respondent averred inter alia that the Applicant does not reside within jurisdiction as he resides in Anambra State. The Applicant was committed to the prosecution's custody on 26th February 2020 after an arraignment.

The signature of the Applicant on the affidavit in support of the application is different from that the signed on the written statement he made to Investigators. He was not the person who signed the affidavit as he was on Police custody. There is likelihood he will interfere with prosecution witnesses if admitted to bail.

While in Police administrative bail, he kept harassing and interfering with key prosecution witnesses as shown in Exhibit Police 2 attached to the Counter Affidavit. There is strong likelihood, he will evade further appearance in Court if granted bail.

The learned Applicant's Counsel in his oral response contended that it is the law that he who asserts has the burden of proof to discharge. Also that facts not controverted are deemed admitted. That the Respondent has not contradicted the facts averred in the Applicant's affidavit. Also that the Respondent has not proved vide evidence that the Applicant did not sign the affidavit in support of the application.

I have given due consideration to the foregoing averments in the affidavits of the parties as well as submissions of their learned Counsel.

As aforesaid, the offence with which the Defendant is charged is not punishable with death. It attracts a sentence of 7 years upon conviction. It is thereforeailable by the provision of Section 162 of ACJA. The only bases for which he can be denied bail is where the Respondent has made

out vide evidence any of the conditions set out in Section 162(a) to (f) of ACJA.

The Respondent admitted in its Counter Affidavit that the Applicant was granted police administrative bail. It was not alleging that he jumped bail. The only complaint by the Respondent is that while on the bail he harassed the prosecution key witnesses. In this regard a copy of his alleged post on whatapp was attached as Exhibit POLICE 2.

I have examined Exhibit Police 2. Undoubtedly, it is a computer generated evidence which can only be admissible upon compliance with the provision of Section 84(2) and (4) of the Evidence Act 2011 by way of either oral evidence or certificate stating how the information contained from the computer, and the working condition of the computer at the time. There is no such evidence placed before the Court in support of Exhibit Police 2. For this reason it is rejected and cannot be relied upon by the Court.

The Respondent also contended that the Applicant was not the one who signed the affidavit in support of his application for bail as the signature is different from that he signed before Investigators. I have given a thought to this contention and do hold the view that the Respondent has not averred or placed any evidence before the Court showing that the Applicant has no other signature other than that he signed before Investigators. Besides, wrong or inconsistent signature of an Applicant in an application for bail is not one of the factors listed out under Section 162(a) to (f) of ACJA upon which an Applicant can be denied bail. Indeed, under Clause e of the preamble to the Fundamental Rights Enforcement Procedure Rules 2009 (under which an application of this nature can be brought) the Court is enjoined to recognize applications for enforcement of fundamental right (of which this application is a specie) by third parties other than the Applicant himself.

By reasons of the foregoing, the Court holds that the Respondent has not satisfied it as to the existence if any of the grounds set out in Section 162(a) to (f) of ACJA to justify a refusal of this application. In the circumstances, the Court resolves the sole issue raised above in favour of the Applicant against the Respondent. In consequence, this application succeeds. It is ordered as follows in the exercise of the Court's discretion under Section 165(1) of the ACJA: -

- (1). Bail is granted to the Applicant in the sum of N1, 000, 000.00 with one surety in the like sum.
- (2). The surety shall be a Grade Level 15 Officer in the Federal Civil Service of Nigeria.
- (3). The surety shall be resident within jurisdiction and his street address confirmed in writing by the staff of this Court.
- (4). The surety shall depose to an affidavit of means to which his current passport photograph shall be affixed.

Signed
Hon. Judge
4/3/2020

LEGAL REPRESENTATIONS:

- (1). Mr. Effiong Asuquo for the Prosecution.
- (2). Mr. Chinedu Akubue for the Defendant.