

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

**BEFORE HIS LORDSHIP: HON.JUSTICE D.Z. SENCHI  
COURT CLERKS: – T. P. SALLAH & ORS**

**COURT NUMBER: 13**

**DATE: 20/02/2020**

FCT/HC/CR/208/2017

FCT/HC/M/1336/2019

**BETWEEN:**

COMMISSIONER OF POLICE----- COMPLAINANT/RESPONDENT

AND

1. SUNDAY OMOROGBE ]  
2. JEREMIAH KELVIN ]

DEFENDANTS/APPLICANTS

3. YAKUBU VICTOR ]  
4. OCHOR GODWIN ]

DEFENDANTS/RESPONDENTS

**RULING**

The Defendants herein were arraigned before this Honourable Court on 3<sup>rd</sup> July,2017 on a two-count charge of the commission of the offences of criminal conspiracy and armed robbery punishable under the provisions of Sections 97 and 298(c) of the Penal Code. All the Defendants pleaded not guilty to the charges against them. Trial commenced in the instant case.

The 1<sup>st</sup> and 2<sup>nd</sup> Defendants (who are remanded in prison custody) have now filed the present Motion on Notice No. M/1336/2019 dated and filed on 22<sup>nd</sup> November, 2019 pursuant to the provisions of Sections 158, 162, 163 and 165 of the Administration of Criminal Justice Act 2015; Sections 35(4) and

36(5) of the Constitution of the Federal Republic of Nigeria 1999 (as Amended); and under the inherent jurisdiction of this Court praying for the following orders:-

- 1. Admitting the 1<sup>st</sup> and 2<sup>nd</sup> Defendants/Applicants to bail pending the hearing and determination of the case against them.*
- 2. And for such further/other orders as the Honourable Court in the circumstance may deem fit to make.*

In support of the application, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants (hereinafter called the Applicants) filed an Affidavit of 9 paragraphs deposed to on their behalf by one Osomukie Sorgwe, their Counsel. Counsel to the Applicants also filed his Written Address which he adopted as his oral arguments in support of the application.

None of the Respondents filed anything to oppose the Applicants' instant application for bail.

### **ISSUES FOR DETERMINATION:**

Counsel to the Applicants formulated the issue for determination of the instant application to be as follows:-

*"Whether having regard to the provisions of Sections 35 and 36(5) of the CFRN 1999 (as amended), Sections 158 and 162 of the ACJA, 2015 and in the light of the affidavit evidence placed before this Court, it has power to admit the 1<sup>st</sup> and 2<sup>nd</sup> Defendants/Applicants to bail."*

Vide their affidavit in support of the instant application, the Applicants averred that they were arraigned before this Honourable Court on charges bordering on conspiracy and armed robbery but they were never involved in a crime. That they have been in the Special Anti-Robbery Squad (SARS) detention since their arrest in 2017. That they are responsible Nigerian citizens and had no criminal record prior to the instant charge. That they have fixed addresses and will not jump bail if granted same. That

they are ready to stand their trial and will not interfere with the investigation in this case or commit any other offence. They are also ready to produce reasonable and reliable sureties for their bail.

Relying on Sections 36 of the Constitution of the Federal Republic of Nigeria 1999, Counsel to the Applicants submitted that bail is a constitutional right which is granted subject to the discretionary powers of the Court. He cited the case of ***ENEBELI V. CHIEF OF ARMY STAFF (2000) 9 NWLR (PT. 671) P. 119***. He submitted that the core essence of bail is to ensure that while the Applicants' right and presumption of innocence under the Constitution is upheld, they are made to be present in Court to face their trial. He submitted that the offences for which the Applicants have been charged fall under the category of offences punishable with imprisonment of more than 3 years and are bailable under Section 162 of ACJA 2015 where certain circumstances are not shown. He contended that those circumstances are not present in the instant case and as such the Applicants are entitled to bail since they are not required to show exceptional circumstances as under Section 161 of ACJA 2015 where the offence is punishable by death. He urged this Court to grant the application for bail on liberal terms in view of the affidavit evidence before it.

In consideration of the sole issue for determination, it is trite law that to grant or refused an application for bail certain criteria must be followed thus:-

- (a) The nature of the charge;
- (b) The strength of the evidence which supports the charge;
- (c) The gravity of the punishment in the event of conviction;
- (d) The previous criminal record of the accused, if any;
- (e) The probability that the accused may not surrender himself for trial;
- (f) The likelihood of the accused interfering with witnesses or may suppress any evidence that may incriminate him;

- (g) The likelihood of further charge being brought against the accused; and
- (h) The necessity to procure medical or social report pending final disposal of the case.

See **SULEMAN V. C.O.P., PLATEAU STATE (2008) 8 NWLR (PT. 1089) P. 298.**

By virtue of **Section 161 of the Administration of Criminal Justice Act, 2015**, a person accused of an offence and brought before the Court 'shall' be entitled to bail.

In the instant case, the Applicants have been arraigned before this Court on charges of having committed the offences of criminal conspiracy and armed robbery punishable under the provisions of **Sections 97 and 298(c) of the Penal Code**. The punishment for these offences upon conviction is a sentence of life imprisonment (or a less). The relevant provision that guides a consideration of bail where the suspect is charged with an offence for which the punishment attracts imprisonment for a term of over 3 years (as in the instant case) is **Section 162 of the Administration of Criminal Justice Act, 2015**. It provides as follows:-

- "162. *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 reasonable ground to believe that the Defendant will, where released on bail, commit another offence;*
  - (b) attempt to evade his trial;*
  - (c) attempt to influence, interfere with, intimidate witnesses, and or interfered in 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 the functioning of the criminal justice administration, including the bail system."*

In the decision of the Court of Appeal in **OYEBAMIJI AKEEM V. FEDERAL REPUBLIC OF NIGERIA(2016) LPELR-41120(CA)** which is very relevant to the instant application for bail before this Court. In that case the Court of Appeal per Tsammani JCA (delivering the lead Judgment) held as follows:-

*"In the instant case, I am of the view that, save where the circumstances or factors enumerated in Section 162(a) – (f) of the ACJA, 2015 have been shown to exist, where an accused person makes an application, the Court is enjoined and mandated or commanded to grant bail. This is in view of Section 35(4) of the 1999 Constitution (Supra).*

*Thus, a combined reading of Section 35(4) of the 1999 Constitution and Section 162 of the ACJA, 2015 makes bail a right and therefore mandatory where an accused person applies for same. All that an accused person need do is to file an application for bail stating why he is entitled to bail. Once that is done the onus would be on the prosecution to present before the Court reasons why the accused person should not be granted bail, in such a way as to bring the accused person's case within any of the exceptions enumerated in Section 162(a) - (f)."*

It is therefore clear that all the Applicants (who have been charged with offences for which punishment attracts more than 3 years imprisonment) have to do is to apply for bail and same would be granted to them. The onus is however on the prosecution to show that the Applicants are not entitled to bail by establishing any of the circumstances set out in **Subsections(a) – (f) of Section 162 of the ACJA**. See also **EYU V. STATE (1988) 2 NWLR PT. 78 P. 602** where the Court of Appeal had held that since the law presumes in favour of liberty and innocence until found guilty, the onus is on the prosecution to

show in a given case that an applicant for bail is not one that should be released on bail.

The Prosecution in the instant case did not even oppose the instant application for bail filed by the Applicants. None of the circumstances set out in **Subsections(a) – (f) of Section 162 of the ACJA** (which would have denied the Applicants bail) has been established by the Prosecution. The exceptions to granting the Applicants bail have thus not been established. Consequently, I hold the views that the Applicants are entitled to bail pending their trial for the offences for which they have been charged. The instant application for bail ought to succeed and it is granted on the following terms:-

- (a) the Applicants i.e the 1<sup>st</sup> and 2<sup>nd</sup> Applicants are granted and release on bail in the sum of N1,000,000.00 each and two sureties each on the like sum;
- (b) One of the sureties to each of the Applicants must be a public servant in the service of the Federation not less than a grade level 13 officer.
- (c) The 2<sup>nd</sup> surety to each of the Applicants must possess a verifiable landed property and the title documents deposited in Court pending the trial and determination of the case.
- (d) The sureties must undertake to produce the applicants in Court until final determination of the case.

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**HON. JUSTICE D.Z. SENCHI**  
**(PRESIDING JUDGE)**  
**20/02/2020**

Defendants:- Absent.

Osomukie Sorgwe:- For the Defendants.

Complainant/Respondent:- Absent.

Court:- The substantive case still stands case adjourned to the 4<sup>th</sup> March, 2020 for continuation of hearing.

**Sign**  
**Judge**  
**20/02/2020**