IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT GUDU - ABUJA

ON WEDNESDAY THE 6TH DAY OF FEBRUARY, 2020.

BEFORE HIS LORDSHIP ; HON. JUSTICE MODUPE OSHO-ADEBIYI

SUIT NO. CR/221/2018

COMMISSIONER OF POLICE -------- COMPLAINANT/RESPONDENT
FCT COMMAND ABUJA

AND

PAUL JIMOH ---------- DEFENDANT/APPLICANT

RULING

On the 22nd of January, 2020 when this matter came up for hearing the prosecution counsel informed the court that they cannot proceed because their witnesses are absent. Learned counsel applied for a new date. The Defendant counsel opposed the application and prayed the court in the alternative for the following;

1. That prosecutor be foreclosed in accordance to section 353 (1) & (2) of ACJA and Order 1& 7 of the practice direction as the Defendant has suffered unjustly as he has been in custody

2. In the alternative, that Defendant be admitted on bail.

This application is predicated on the following laws; section 161(2b) Administration of Criminal Justice Act and section 36 (5) of the 1999 Constitution (as amended). He cited the case of Saidu v. State and

Adams v. A. G. of the Federation. Learned Counsel submitted that the court should note the provision of Administration of Criminal Justice Act in section 161 (2)(b), extraordinary delay in the prosecution and investigation of the matter. Counsel respectfully asks the court to revisit the application for bail of the Defendant.

Prosecution in opposing the application submitted that since the commencement of this matter in this court, it is not up to a year. That the delay in the former court was due to the demise of the late Judge which is outside the control of any human being. That section 353 Administration of Criminal Justice Act is not applicable. On the issue of foreclosure, counsel submitted that the Defendant counsel cited no law that permits him to foreclose a prosecutor that applied for adjournment just one time. He cited Section 396 of Administration of Criminal Justice Act and submitted that they are within the confines of the law to apply for adjournment. On the issue of bail, counsel leaves it at the discretion of the court but submitted that by section 165 Administration of Criminal Justice Act the bail of this nature is discretionary and the court having earlier taken a decision becomes functus officio. Defence counsel in reply on points of law submitted that bail is always at the discretion of the court and section 353 Administration of Criminal Justice Act states that the court shall make such order as the justice of the case require.

I have taken note of the submissions of learned counsel on both sides. I shall be addressing the prayers as raised by the Defendant counsel.

On the first prayer that prosecutor be foreclosed in accordance to section 353 (1) & (2) of Administration of Criminal Justice Act and Order 1& 7 of the practice direction as the Defendant has suffered unjustly as he has been in custody, I will reproduce the provision of section 353 (1) & (2) of Administration of Criminal Justice Act. It provides as follow;

> **353.** (1) Where the case is called and neither the prosecutor nor the defendant appears, or the defendant appears and the prosecutor does not appear, the court shall make such order as the justice of the case requires.
>
> (2) The court may, in the order, include such direction as to the payment of costs as the court considers fit, and the payment of the costs may be as if it were a fine.

The above provision does not apply to the present case as the Prosecutor is present in court. However section 396 (4) Administration of Criminal Justice Act 2015 provides as follows;

> (4) Where day-to-day trial is impracticable after arraignment, no party shall be entitled to more than five adjournments from arraignment to final judgment: provided always that the interval between each adjournment shall not exceed 14 working days.

This suit was transferred to this court on the 25th of April, 2019 and the matter started De Novo. Hearing of the suit started 28th of May, 2019 and the Prosecution has been absent only once and this is the first time the Prosecution is asking for an adjournment. Therefore the Prosecution

is entitled to an adjournment as they have not exceeded the five adjournments as provided by Section 396 (4) above.

On the second prayer which is in the alternative, that Defendant be admitted on bail. It is worthy of note to state that the Defendant had earlier applied to this court by motion for the bail of the Defendant which said application was not granted. It is trite law that application for bail can be brought as many times as possible depending on the circumstances necessitating such application. This application can be brought under the provisions of Section 161 (1) & (2) of Administration of Criminal Justice Act 2015 which provides thus;

> **161.** (1) A suspect arrested, detained or charged with an offence punishable with death shall only be admitted to bail by a Judge of the High Court, under exceptional circumstances.
>
> (2) For the purpose of exercise of discretion in subsection (1) of this section, 'exceptional circumstance' includes:
>
> > (a) ill health of the applicant which shall be confirmed and certified by a qualified medical practitioner employed in a Government hospital, provided that the suspect is able to prove that there are no medical facilities to take care of his illness by the authority detaining him ;
> >
> > (b) extraordinary delay in the investigation, arraignment and prosecution for a period exceeding one year; or
> >
> > (c) any other circumstances that the Judge may, in the particular facts of the case, consider exceptional.

Therefore the court cannot not be functus officio on a bail application in a criminal charge before the same court on the same criminal charges. This provision talks about exceptional circumstances which shall be at the Court discretion, especially in capital offence charges. These exceptional circumstances is a good ground for further bail application to the same court in the same criminal trial after one or more failed attempts. In such application the Applicant must show that there has been a material change in circumstances or an error in law was made during original bail hearing.

It is the duty of every Applicant to present the necessary materials before the court in support of his application to enable the court exercise its discretion in his favour. The exercise of the discretion must be judicial and judicious. A number of factors have been identified as constituting very exceptional circumstances. **See: Buwai v. State (2004) 16 NWLR (Pt 899) 285; Ani v. State (2004) 7 NWLR (Pt 872) 249 and Enebeli v. Chief of Naval Staff (2000) 9 NWLR (Pt 219) 119**. The compelling consideration for the exercise of this discretion lies with and within the peculiar facts of the individual circumstances made out as exceptional.

The Defendant counsel has not brought to the attention of this Honourable Court any exceptional circumstance or an error in law made during the hearing of the original bail application brought before this court. He placed reliance on section 161 (2) (b) which provides for extraordinary delay in the prosecution and investigation of the matter. This court has stated that hearing in this suit commenced on the 28th of May, 2019 which is barely nine (9) months. The grant of bail in capital

offences are not of right. There is nothing placed before this Honourable Court by the Defendant counsel to granting this alternative prayer. Hence the application fails.

Consequently, the prayer of the Defendant for foreclosure of the Prosecution or the alternative prayer which is for the Defendant to be admitted to bail is hereby refused.

Parties: Defendant present

Appearances: E. O. Ochayi for the Prosecution. G. C. Eze for the Defendant.

HON. JUSTICE M. OSHO-ADEBIYI

JUDGE

6TH FEBRUARY, 2020