

**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/CR/288/2016
DATE: 29TH APRIL, 2020**

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA	-	COMPLAINANT
AND		
1. GRACE NKOYO NWAUZOR 2. OKORIE TOBIAS OTUBAKU] -	DEFENDANTS

Parties absent.

K. Agbili Ezenwwa for the prosecution.

Francis Amadi for the 1st Defendant.

E.A. Durkisha for the 2nd Defendant.

Prosecution's Counsel – The matter is slated today for ruling and continuation of hearing.

R U L I N G

This ruling is predicated on a Notice of Preliminary Objection filed by the prosecution's counsel dated 16/3/2020 brought pursuant to Section 36(6) (c), Section 240 of the 1999 Constitution of Federal Republic of Nigeria (as amended), Rule of Professional Conduct for Legal Practitioners 2007 and under the inherent powers of this Honourable Court.

In the application, the Complainant/Applicant prays the court for the following:

1. An Order striking out the Motion on Notice for being grossly incompetent, invalid, lack of jurisdiction and abuse of court process.
2. And any other order(s) that this Honourable Court may deem fit to make in the circumstance.

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

1. That the motion filed is wrongly constituted, incompetent and robs this court of the jurisdiction to proceed to hear the application.
2. That the application is not signed or filed by a legal practitioner to practice law in the Federal Republic of Nigeria.
3. That this court has become *funtus officio* to hear this application.
4. That the name of the Applicant as brought in the motion paper is unknown to the Complainant/Respondent.

Learned prosecution counsel filed a written address dated 16/3/2020 wherein counsel submitted two issues for determination to wit:

1. Whether there is any valid process that would warrant the attention of this Honourable Court.
2. Whether this Honourable Court has jurisdiction to entertain this application.

On Issue 1, it is the submission that there is no valid application before this Honourable Court. The identity of the counsel who

signed the motion on notice is not ascertainable. There was no marking of the name that purportedly signed the application from among the names listed in the application. See case of NYONG & ANOR v OUT & ORS (2012) LPELR – 8480 (CA).

It is further submitted that motion was not properly signed or filed as there is no valid seal and stamp of the NBA affixed thereon as required by law. See Section 10(1) (2) (3) of the Rules of Professional Conduct for Legal Practitioner 2007 and the case of YAKI & ANOR v BAGUDU & ORS (2015) LPELR 25721 (SC).

On Issue 2, it is the submission that this Honourable Court lacks the jurisdiction to entertain this application. This Honourable Court has become *functus officio* based on its well considered ruling dated 21/2/2020 on this same application.

It is submitted that the only option available for the Applicant is to appeal against that decision. See case of NUHU AHMED v LAWALI YAKUBU & ORS (2009) NWLR Pt 1138 Pg 511. Court is urged to strike out this application for being incompetent.

The 1st Defendant/Respondent's counsel made an oral reply on points of law, wherein counsel in replying to the processes filed submitted that the motion in issue was duly filed by a legal practitioner Barrister W. Mbaya in the law firm of F.O. Amadi & Co and that the said counsel appended his seal. Court is urged to hold that the motion is competent.

On the issue of the court being *functus officio* as regard the application for bail, it is submitted that application for bail can be

filed as many time as possible provided they are made under different ground. See ADAMS & ANOR v COP PLATEAU STATE (2008) LPELR (SC) 19/2005.

With respect to the name of the 1st Defendant on the motion paper, it is submitted that the name of the 1st Defendant Grace Nwauzor amount to substantial compliance to identify the 1st Defendant. Court is urged to discountenance the Notice of Preliminary Objection.

The 2nd Defendant's Counsel had nothing to say with respect to this application.

I have carefully considered the processes filed and submission of learned counsel on both sides. The motion under attack and fire from the prosecution counsel is Motion No. M/6537/2020 is premised on three (3) major planks:

1. That it is incompetent on the grounds that it is not signed and sealed by a legal practitioner.
2. That the court has become funtus officio.
3. That the name of the Applicant as brought in the motion paper is unknown to the complainant/applicant.

On the first plank/grounds, a close look at the original file copy i.e. Court's copy shows clearly that the said motion was duly signed by Brian W. Mbaya of counsel and his NBA seal was also properly affixed.

In the light of the above, I find it difficult to come to terms with the prosecution counsel that the motion under consideration

was not signed by a legal practitioner. Accordingly I hold that the submission of learned prosecution's counsel is pedestral and of no moment.

On the issue of this court becoming functus officio with respect to the application for bail, it is trite law that application for bail can be filed as many times as possible provided they are made under different grounds. See the Supreme Court case of ADAMU & ANOR v COP PLATEAU STATE (Supra), COL. HALILU AKILU v CHIEF GANI (1998) NWLR (Pt 102) Pg 122.

In the light of the above, I hold the considered view that this court is not funtus officio to hear the application in Motion No. M/6324/2020.

With respect to the name of 1st Defendant on the motion paper, I am in one with the submission of learned counsel to the 1st Defendant that the name of the 1st Defendant Grace Nwauzor amount to substantial compliance to the identity of the 1st Defendant and also there is no contention as to the identity of the 1st Defendant.

In the light of the above, I am of the considered view that this Notice of Preliminary Objection is drawing the hand of the court backwards since the issues therein are pedestral and clothed in technicalities. This court has since departed from doing technical justice and progresses in doing substantial justice which is good for the well-being and development of our society.

In conclusion, I hold that the Notice of Preliminary Objection is lacking in merit and is accordingly overruled and dismissed.

(Sgd)
JUSTICE SALISU GARBA
(PRESIDING JUDGE)
29/04/2020

1st Defendant's Counsel – We thank the court for the ruling

Prosecution's counsel – We appreciate the ruling.

1st Defendant/Applicant's Counsel – We apply to move the bail application.

2nd Defendant/Respondent's Counsel – We are ready.

1st Defendant/Applicant's Counsel - - Our Motion is No. M/8324/2020. It is dated the 12/3/2020 and filed on 12/3/2020.

It is brought pursuant to Sections 158, 162 and 163 of ACJA and Section 35 and 36 of the Constitution of the FRN (1999) (as amended) and under the inherent jurisdiction of this court.

We are praying for an order of this court to admit the 1st Defendant/Applicant to bail.

We apply to abandon the 2 prayers in the motion; while the 3 prayer is the omnibus prayers.

The application is supported by 13-paragraph affidavit and a written address.

We rely on all the averments in the affidavit in support especially paragraph 11 of the affidavit.

We also seek to adopt our written address as our oral submission.

We urge the court to admit the 1st Defendant/applicant to bail on a very liberal terms.

Prosecution/Respondent's Counsel – In opposition to the motion, we have filed a counter affidavit dated and filed on 17/3/2020; it was deposed to by one Iliya Markus, a Staff of the Complainant/Respondent.

It is of 8-paragraph affidavit and we adopt same.

In support of the counter affidavit we filed a written address filed on 17/3/2020. We adopt same as our oral argument in support of the counter affidavit.

We urged the court to refuse the application for bail and order for accelerated hearing.

1st Defendant/Applicant's Counsel – On points of law we filed a Reply on Points of law countering the averment in the counter affidavit.

We seek to adopt same and urge the court to grant the application.

R U L I N G

Court – The 1st Defendant/Applicant brought an application via a Motion No. M/6324/2020 praying the court to admit her to bail pending her trial on ground of ill-health.

On the other hand the prosecution's counsel opposed the application by filing a counter affidavit and a written address.

On the part of the court after a careful consideration of the submission of the learned counsel on both sides and going through the record of the court is clear that the 1st Defendant/Applicant was once granted bail but she jumped it and as a result of that her bail was revoked and remanded in correctional centre.

The ground of this present application filed by the 1st Defendant is that she is sick. However, as rightly pointed out by the prosecution's counsel there is nothing by way of medical report to suggest that assertion.

It is also clear that there is nothing before the court to suggest the allegation made by the complainant in their counter affidavit that while the 1st Defendant/Applicant was in their custody she duped to launder the sum of N8 Million and that the 1st Defendant/Applicant committed many offences while she was granted bail but there is nothing to support that before the court.

Considering what I stated about, the 1st Defendant/Applicant is not ordinarily entitle to bail. However, considering the Corona Virus pandemic ravaging the country, and the world at large, court of law are enjoined to grant bail to all the Defendants in correctional centres in the country whose alleged offences areailable.

In the circumstance, the 1st Defendant/Applicant is hereby granted bail in the sum of N10 Million and 2 sureties in the like sum. The sureties must be resident within the jurisdiction of this court and deposit title documents of one of their landed properties they have in the FCT for the duration of the trial with the court.

The 1st Defendant is also to deposit her International passport and be reporting to the Registrar of this court every Monday of the week through the trial.

Lastly, I order for accelerated hearing of the case.

(Sgd)
Justice Salisu Garba
(Presiding Judge)
29/4/2020

Prosecution's Counsel – We have no objection for the ruling.

1st Defendant's Counsel – We thank the court for the ruling.

Prosecution's Counsel – In the circumstance, we ask for 2 days for continuation of hearing.

Court – Case adjourned to 18th and 21st May, 2020 for continuation of hearing. Bail of the Defendants continues.

(Sgd)
Justice Salisu Garba
(Presiding Judge)
29/4/2020