



**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY  
IN THE ABUJA JUDICIAL DIVISION  
HOLDING AT MAITAMA  
BEFORE HIS LORDSHIPS: HON. JUSTICE H. B. YUSUF**



**CHARGE NO: FCT/HC/CR/123/2012  
BETWEEN:**

COMMISSIONER OF POLICE.....COMPLAINANT

**AND**

YAHAYA ABUBAKAR.....DEFENDANT

**RULING**

**Prof. Agbo Madaki** has applied for bail of the Defendant pending trial. The application is brought pursuant to Sections 158 and 161 of the Administration of Criminal Justice Act of 2015 and other relevant provisions of the law. The application is supported by a six paragraphs affidavit deposed to by one Grace Antai, a Litigation Secretary to the counsel of the Defendant.

Prof. Agbo in the character of a teacher filed a 16-pages written address which he adopted before me this morning at the hearing of the application in urging me to grant the application. He did not file a further and better affidavit. However with the permission of the Court he attacked the contents of the counter affidavit on grounds of law.

He took the first swipe on paragraphs 6 and 7 of the counter affidavit which obviously contradict each other. The contradiction there is that while the deponent averred in paragraph 6 that paragraph 3 of the affidavit in support of the application is false in paragraph 6, he stated that he was not in a position to comment of the falsity or otherwise of the paragraph.

Learned counsel also complained about the averments in paragraphs 23 and 30 of the counter affidavit which according to him offend Section 115 of the Evidence Act especially Sub-Section 2, 3 and 4 as the information given therein were not within the personal knowledge of the deponent. He argued that under Section 115 of the Evidence Act, the deponent was under an obligation to state names of the informant, the circumstances in which the information was disclosed to him. He then urged me to as a consequence struck out the offensive paragraphs.

The learned prosecutor from the Ministry of Justice stiffly opposed the application. She relied on a 33-paragraphs counter affidavit filed in opposition and a written address. She urged me to refuse the application for the grounds stated in the counter affidavit. She did not reply to the attack on certain paragraphs of the counter affidavit. I have considered the documents filed by parties. I should first consider the attack by Professor Agbo which is in the form of a preliminary objection. Paragraphs 6 and 7 of the Defendant's

counter affidavit are contradictory of each other. They shall not be relied upon in dealing with the application. The application by the learned prosecutor that she was withdrawing paragraph 7 of the counter affidavit is not competent. The paragraph being part of a counter affidavit sworn to before a Commissioner for Oath cannot be subtracted or added to without been re-sworn before a Commissioner for Oath. Furthermore the learned prosecutor not being the deponent is not a competent person to disown any of the paragraphs therein. That being the case, it is my view that the application to withdraw paragraph 7 is thoroughly misconceived and refused.

This takes me to the attack on paragraphs 23 and 30 of the counter affidavit which Prof. Agbo says offend paragraph 115 of the Evidence Act. Like I said the learned prosecutor did not proffer any meaningful response to this submission. Be that as it may, Section 115 of the Evidence Act 2011 provides:

- (1) Every affidavit used in the Court shall contain on a statement of fact and circumstances to which the witness depose either of his own personal knowledge or from information which he believe is true.
- (2) An affidavit shall not contain extraneous matter by way of objection prayer or legal argument or conclusion.

- (3) When a person deposes to his believe or any matter of fact and his believe is derived from any source other than his personal knowledge he shall set forth explicitly the facts and circumstances forming the ground of his belief.
- (4) When such belief is derived from information he received from another person, the name of the informant shall be stated and reasonable particulars shall be given respecting the informant and the time, place and the circumstances of the information.

The forgoing is the portion of the law which cannot be circumvented. I have considered the two paragraphs in the counter affidavit which learned counsel complained about, I have found that they are clearly offensive. The totality of averments contained therein did not in any way comply with the prescription in Section 115 of the Evidence Act. The averments in those paragraphs are just speculative to say the least. The result is that paragraphs 23 and 30 which averments are that the Defendant is a notorious criminal and a threat to the society have offended Section 115 of the Evidence Act and accordingly struck out.

Now to the merit of the application itself. The Defendant in this case is standing trial before this Court for the offence of culpable homicide punishable under Section 221 of the Penal Code. The penalty for the offence upon conviction is death. It is therefore a

capital offence and a non-bailable offence subject to a condition that he is able to show exceptional circumstances. Section 161 of the Administration of Criminal Justice Act 2015 Sub-Section (2) (a) has recognized ill health of the applicant which shall be confirmed by a qualified medical doctor (2) Extraordinary delay in the investigation, arraignment and prosecution for a period of one year and any other circumstances that the Judge may in the particular circumstance of the case consider exceptional.

Learned counsel to the Defendant in his argument situated the application on inordinate delay of the trial for over eight years and the global threat of Covid-19 Virus.

I have considered the submission of counsel to the defence to which there is no meaningful opposition from the prosecution. I must agree with Prof. Agbo that there is inordinate delay in this trial. I have also considered the application against the background of the dreaded global Corona Virus which has claimed thousands of victims worldwide and I agree that it is an exceptional circumstance. In fact the pandemic is not an usual event. I do not know of what could be better described.

As a matter of fact the Covid-19 practice direction recently issued by the Chief Judge of the FCT is very suggestive of how dreaded the Virus is and the attitude of the public to it. In the practice direction, suspects in the Correctional Centre are not allowed to be brought to

Court. This would complicate the woes of the suspect if he has to remain in custody. The essence of granting bail as decided in a plethora of authorities is to give him opportunity to prepare his defence and to give him benefit of the Constitutional right to walk about and breathe free air until his guilt is determined by due process of the law.

On this ground and for all that have been urged upon me by **Prof. Agbo Madaki**, I am prepared to exercise my discretion to grant the Defendant bail. He is thus admitted to bail in the sum of N1,000, 000.00 with a reasonable and responsible surety in the like sum. The surety shall be residence in the FCT with a verifiable address and public servant with Federal Government of Nigeria.

**Signed**  
**Hon. Justice H. B. Yusuf**  
**(Presiding Judge)**  
**19/05/2020**