

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

CLERK: CHARITY  
COURT NO. 16

SUIT NO HC/CR/99/19

M/6018/20

DATE: 20-5-2020.

BETWEEN

COMMISSIONER OF POLICE..... COMPLAINANT/RESPONDENT

AND

BABA ABUBAKAR..... DEFENDANT/APPLICANT

**RULING**

**(DELIVERED BY HON. JUSTICE S. B. BELGORE)**

This ruling concerns a bail application vide Motion Number M/6018/20 filed by the Defendant.

The Defendant has been arraigned on a 2-count charge of conspiracy to commit Armed Robbery and Armed Robbery contrary to **S. 6 and S.1(2) of the Robbery and Firearm (Special Provision) Act Cap. R11 LFN 2004.**

He pleaded not guilty to the charge.

Some minute ago learned counsel to the applicant, Usman Sani Esq moved the application summarily. He referred to the 27-paragraphs supporting affidavit and the written address he had earlier filed.

Learned counsel, referred to the fact that the application has health issues i.e. stroke which the Correctional Service where he is being determined cannot

take care of. Mr. Sani adopted his written address as his arguments and urged the court to exercise its discretion in favour of the applicant.

The learned prosecuting counsel, in reply said they had not filled any counter affidavit due to his ill-health. He agreed they were served about four months ago. Finally, he left the matter to the discretion of the court.

I have listened and considered this application in the light of the one-side affidavit evidence and the provisions of Sections **161** and **158** of the Administration of Criminal Justice Act 2015. I have also adverted to the cases law authorities cited by the learned counsel to the applicant. The authorities, *inter alia* are **ALHAJI MUJAHID DOKUBO ASARI VS FRN (2007) 12 NWLR (PT. 1048) 320; ANAEKWE VS COP (1996) 3NWLR (PT.346) 320; ABACHA VS STATE (2002) 5 NWLR (PT.761) 638, GANI FAWEHINMI VS STATE(1990) 1 NWLR (PT. 127) 486.**

Now, the offence of Armed Robbery Alleged against this applicant is a non-bailable offence. Bail can only be extended to the applicant upon the discretion of the court acting judicially and judiciously. By the provisions of **S.158 and S.161 of ACJA**, bail can only be granted in circumstances such as I am faced now upon satisfaction of some conditions to wit:

- (1) That the applicant will not likely jump bail
- (2) That the applicant will not likely tamper with police investigation
- (3) That there is no likelihood of the applicant committing (further or other offences.

In fact, the provision of S.161 (i) of ACJA introduced another fact as condition of “exceptional circumstance”.

I am at this juncture, inclined toward a re-statement of some clear facts before this court as presented by the applicant. Remember the prosecution has no counter affidavit. And the effect of a non production of a counter affidavit is that the deposition in the supporting affidavit is not challenged. And having not being challenged, the fact contained therein became uncontroverted and the court must act upon their subjects to some exception that are not applicable in this instance, see the case of:

- (1) The applicant, a taxi driver, is a married man with a child and an aged mother. See paragraphs 4 and 20.
- (2) The applicant is seriously ill. He suffered from stroke which has paralysed one side of his body. Paragraph 14.
- (3) There is no medical report because the Kuje Correctional Center has no medical facility to entertain this kind of ailment and the officer in charge had refused to allow any opportunity of a medical Report being issued. See paragraphs 17 and 18.
- (4) The applicant is willing and able to provide surety to take him on bail. See paragraph 25.
- (5) The applicant presently cannot bath himself nor do anything without the aid of his co-inmates at the Kuje Correctional Centre. See paragraph 15.

Based upon the available manifested facts, what should the court do now?

Like I said before the provision of ACJA vide S.161(i) provides for bail to be granted upon exceptional circumstance. Do the present condition of this applicant qualify as one? My answer is in the affirmative. Only a living person can stand trial in court. This applicant is sick, infact seriously sick. His appearance in court attested eloquently to this fact. I think the fact of serious sickness the type that cannot be entertained where he is being kept in custody is an exceptional circumstance. I am fortified in my believe on this fact by the case of **Gani Fawehinmi VS State** (supra). The case of **Chukwuyere VS COP (1975) 5 EC SLP 14** is very appropriate to.

So, without much ado, I think this application, has merit. Infact, I am free to take judicial Notice of the ravaging and damages Corona virus that has crippled all institutions of State the world over. Nigeria is no exception. So, to incarcerate a person with serious health challenge like stroke/paralysis in a correction centre would further endanger the lives of the other inmates and

put the medical facility more in jeopardy. Infact, the efforts these days is to decongest the correctional facilities as much as possible.

In effect therefore and in the light of the foregone, I grant this application. The applicant is admitted to bail in the sum of ~~₹~~5million and two sureties each in the same amount. The sureties must be civil servants working and residing within the jurisdiction of this court and must not be less than level 8 officer.

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S.B. Belgore

(Judge) 20-5-2020.