IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT GUDU – ABUJA
DELIVERED ON THE 4TH DAY OF JUNE, 2020.
BEFORE HIS LORDSHIP; HON. JUSTICE MODUPE OSHO-ADEBIYI

CHARGE NO.CR /20/2018

COMMISSIONER OF POLICE --------COMPLAINANT/RESPONDENT

AND

1. EZEUGWU PAUL CHUKWUJEKWU
2. ADOGAH EMMANUEL } DEFENDANTS
3. EPHRAIM EMEKA UGWUONYE ---------- DEFENDANT/APPLICANT

RULING

On the 23rd day of March, 2020, the 3rd Defendant through his counsel the learned Silk, J. C. Njikonye, SAN made an oral application for bail pending conclusion of trial. The oral application was predicated on **S. 158 and 161 (2) (b) & (c) of the Administration of Criminal Justice Act 2015 and S. 35 (4), 36 (4) and 36 (5) of the 1999 Constitution of the Federal Republic of Nigeria (as amended)**. In summary, Learned Silk submitted that though this Honourable Court had earlier refused the 3rd Defendant bail, the Court still has jurisdiction to consider a subsequent application for bail. He cited the case of **FRN V. BULAMA (2008) 16 NWLR Pt. 951 @ 219 @ 246-247 para H-C.** He submitted that the question to consider here is what the change in circumstances is. He urged the Court to take judicial notice of the records and proceedings of the Court. Learned Silk stated that from date of arraignment till date the case has lasted for more than 1

year and that the Complainant has called only one witness out of 7 (seven) witnesses and that the PW1 is yet to conclude his evidence. He submitted that relying on **S. 161 (2) (b) Administration of Criminal Justice Act 2015** that extra ordinary delay is considered as exceptional circumstances. He further stated that relying on paragraph **(c) of S. 161 of Administration of Criminal Justice Act 2015** the court should take judicial notice of the court records in respect to the evidence of PW1, that the court is entitled to at this stage look at the evidence and consider whether there is any remotest possibility that 3rd Defendant can be discharged and acquitted, if there is any such doubt the law empowers the Court to exercise its discretion in favour of the 3rd Defendant. This is so because if the 3rd Defendant is discharged and acquitted there cannot be any remedy to the 3rd Defendant for the incarceration but if found guilty he will serve his term. He cited the cases of **EWERE V. COP (1993) 6 NWLR Pt. 299 @ 233 and ALAYA V. STATE (2007) 16 NWLR Pt. 1061 @ 483.** He urged the Court to exercise the Court's discretion judiciously.

Learned counsel to the Complainant opposed the application on the following grounds;

1. The bail application had earlier been decided by this Court and nothing new has been adduced to as fresh facts hence the Court is functus officio.
2. The Court cannot rely on evidence of one witness ie the PW1 as they have several other witnesses which have already been frontloaded.

3. Section 161 (2) of Administration of Criminal Justice Act 2015 provides for exceptional circumstances which includes ill health. That extra ordinary delay mentioned by counsel to the 3rd Defendant is meant for when arrest has been made and Defendant is kept in custody for a longer period without any reasonable investigation for a period exceeding one year as such S. 161 (2) (b) is not applicable.

4. That no facts or value has been placed before this Court to constitute exceptional circumstance.

5. That on delay in prosecution; it is on record that since commencement of this trial the 3rd Defendant has had 3 different solicitors cross examine the PW1 due to change in counsel hence the delay.

He submitted that the cases cited by the learned Silk are all inapplicable.

On reply on points of law, learned Silk submitted that a holistic reading of **S. 161 (1) and (2) of Administration of Criminal Justice Act 2015** would show that the time period referred to includes before arraignment and after arraignment as against the submission of the Complainant. That S. 161(1) states period of arrest, detention or after Applicant has been charged and S. 161 (2) (b) states investigation, arraignment and prosecution. On the submission by the Complainant that the Court is functus officio, he cited **ORJI V. AMARA (2016) 14 NWLR Pt. 1581 Pg. 21 @ 48 para C-F, ANEKWE V. COP (1996) 3 NWLR Pt. 436 @ 320 and SULEIMAN V. COP PLATEAU STATE (2008) 8 NWLR Pt. 1089; 298 @ 322-323.**

Learned counsel for the Applicant later filed a further address in aid of the 3rd Defendant's oral application for bail pending trial dated 8/4/2020 and

adopted same on the 20/5/2020. In the said further address in aid of the oral application for bail pending trial counsel further submitted that the interest of justice is best served if the court exercises its discretion in favour of the Defendant/Applicant by granting him bail at this time, pending the conclusion of his trial. The Applicant narrows this further address to the application of **Section 161 (1) (2) (c) of the Administration of Criminal Justice Act 2015**. He submitted that when words used in a statute are clear and unambiguous they should be given their ordinary and natural meaning, he cited **Okoye v. C.O.P. (2015) 17 NWLR (Pt. 1488) 276 @ 320 F-H** and therefore submitted that **Section 161 (1) (2) (c) of the Administration of Criminal Justice Act 2015** gives the court discretion to consider "any other circumstance" of the case that may be regarded as 'exceptional" outside those specifically enumerated in sub-rules 2 (a) and (b) in determining whether or not to grant bail to an alleged capital offender as in the circumstance of the Defendant/Applicant. Counsel submitted that the court has jurisdiction to take judicial notice of its records and proceedings, he cited **Section 122 (2) (m) Evidence Act 2011, ONAGORUWA V. ADENIJI (1993) 5 NWLR (PT. 293) 317 @ 331 H, IKHAZUAGBE V. C.O.P. (2004) 7 NWLR (PT. 872) 346 @ 363 G-H and OGBHEMHE V. C.O.P. (2001) 5 NWLR (PT. 706) 215 @ 222** where the Court of Appeal considered "the character of evidence" tendered by the prosecution when it wielded its discretion in granting bail to the Appellant charged with armed robbery (capital offence) whose bail had been denied by the trial Court. Learned counsel concluded that to keep the 3rd Defendant/Applicant in prison custody until the conclusion of his trial in the face of Prosecution vendetta-

laced prosecution cum persecution of the 3rd Defendant would not only negate the 3rd Defendant/Applicant's constitutional presumption of innocence but also encourages the use of prosecutorial power to get even. He urged the court to exercise discretion in favour of the Applicant and grant his application for bail pending the conclusion of his trial.

In response the Complainant/Respondent filed a reply to the further written address in aid of the 3rd Defendant oral application for bail pending trial dated 14/4/2020 and adopted 20/5/2020. In the address learned counsel submitted that the position of the counsel to the 3rd Defendant is not only mis-leading but also not a true position of the law as time does not run in filing a counter affidavit, he relied on **Ugwuoke v. FRSC & Ors (2019) LPELR-4661 (CA)** hence the 3rd Defendant/Applicant's oral application for bail could not be predicated on the failure of the Respondent to file a counter affidavit as he was very much within time to do so. Counsel submitted that a court in the course of criminal proceedings before it has the power to revoke for good reasons, the bail of the accused or admit to bail an accused it had earlier refused to admit to bail, however, the court can only exercise this power if it becomes aware of the existence of circumstances or new circumstance to justify such consideration, he relied on **OKONKWO V. FRN (2013) LPELR-22564 (CA) PER AGIM, JCA (PP. 5-9, para F)**. Counsel submitted further that the Applicant has not placed enough material evidence before this Honourable Court to warrant a departure from the earlier ruling refusing a similar application. Counsel submitted that **Section 162 (1) of the Administration of Criminal Justice Act**

2015 has not changed the position of the law as stated in **BAMAIYI V. STATE (2001) 8 NWLR (PT. 715) 270 AT 291** that this court has the discretion whether or not to grant bail to an accused person who is charged with an indictable offence. Relying on **Section 161 (2) of the Administration of Criminal Justice Act 2015, the cases of Ezike v. State (2019) LPELR-47711 (CA) and Abacha v. State (2002) 5 NWLR (Pt. 761) 638 at 653-64** counsel submitted that the Applicant has not shown any special or exceptional circumstance to warrant the grant of this application. Counsel further submitted that the presumption of innocence does not make the grant of bail automatic since there is always the discretion to refuse bail if the court is satisfied that there are substantial grounds for believing that the Applicant for bail pending trial would abscond or interfere with witnesses or otherwise obstruct the course of justice. He cited **Chukwu v. FRN & Anor (2018) LPELR-44519 (CA)**. Counsel also submitted that the Honourable Court in considering the application for bail cannot at this stage be called upon to evaluate the evidence led so far. That the court is expected to consider proof of evidence and that the proof of evidence before this court discloses a prima facie case against the 3rd Defendant/Applicant and thus the charge does not constitute an abuse of court process, he relied on **Ikuforiji v. FRN (2018) LPELR-43884 (SC)**. Learned counsel urged the court to resolve the three issues submitted for determination in favour of the respondent by dismissing or striking out this application for being manifestly incompetent and lacking in merit.

I have listened and carefully studied processes filed by learned counsel and the issue for determination in my view is:-

> "Whether Applicant has been able to convince the court that he is entitled to bail in the circumstances of this case".

Learned counsel to the Defendant/Applicant hinged his application for bail of Defendant on **SECTION 158 & 161 (2) (b) & (c) of the Administration of Criminal Justice Act 2015 and SECTION 35 (4), 36 (4) & 36 (5) of the constitution.** The court had earlier delivered a ruling refusing bail to the Applicant hence the court is functus officio save and except new/changed circumstances emerged. Learned counsel to the Applicant submitted that there are three new/changed Circumstances in this suit which the court ought to consider in exercising its discretion for bail in favour of Defendant. The 3 changed circumstances in a nutshell are:-

Section 161 (2) (b) **of the Administration of Criminal Justice Act 2015** which states that " A suspect arraigned, 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.

> (2b.) Extraordinary delay in investigation, arraignment and prosecution for a period exceeding one year, Learned counsel to the Applicant in relying on **Section 161 (2) (b) Administration of Criminal Justice Act 2015** submitted that there has been extraordinary delay in the investigation, arraignment and prosecution of the Defendant for a period exceeding one year.

The second emerging/new/changed circumstances relied upon by Learned counsel to the Applicant is that throughout the examination in chief of PWI, he did not in any way incriminate 3rd Defendant neither did prosecution tender any evidence exhibit in support of PWI's testimony.
The 3rd ground is Section 161 (2) (b) (c) that the court shall grant Defendant bail if Defendant is able to prove exceptional circumstances and such exceptional circumstances includes "any other circumstances that the Judge may, in the particular fact of the case consider exceptional.

On the first ground, that there had been extraordinary delay in the investigation, arraignment and Prosecution of the Defendant for a period exceeding one year in line with **Section 161 (2) (b) Administration of Criminal Justice Act 2015**, Learned Counsel submitted that these words as phrased in the Administration of Criminal Justice Act 2015 ought to be viewed as disjunctive and not conjunctive.

In other words the delay in investigation should be viewed by the court separately; the delay in arraignment should be viewed by the court separately and the delay in prosecution also should be viewed by the court separately rather than view same conjunctively. With my knowledge of English language, conjunction are words which hold, link or glue phrases or clauses together; the most common conjunctive words are "and" "or" and "but" as they all join words or phrases together in order to form a logical sentence. Section 161 (2) (b) states "extraordinary delay in the investigation, arraignment and prosecution for a period exceeding

one year" the word "and" is the conjunctive adverb in the sentence hence I am of the view that Section 161 (2) (b) should be looked at conjunctively but I will take the pains to look at it from learned S.A.N point of view i.e. disjunctively. The question under the circumstances is "has there been extraordinary delay in the investigation of this matter by the police for a period exceeding one year? There is nothing placed before this court to support that there has been extraordinary delay in investigation of this matter. "Has there been extraordinary delay in arraignment of the Applicant for a period exceeding one year? Again there is nothing before this court to prove that there has been any form of delay in arraigning Applicant.

"Has there been any form of delay in Prosecution of this matter for a period exceeding one year? On this issue, learned S.A.N submitted that from arraignment till date has taken over a year. That Applicant was arraigned on the 13th of December, 2018 and till date prosecution is yet to conclude evidence of PWI. At this junction, it is necessary that I point out that there is a whole lot of difference between prosecution and trial. Trial in this matter commenced on the 21st of February, 2019 while prosecution of this matter commenced on the date Applicant/Defendant was arraigned before this court. In all, from arraignment till date has been 18 different adjournments of which prosecutor has never been absent save for one day and that was the date fixed for ruling of bail application (30/1/2019) it was not a date fixed for hearing.

The court has never failed to sit on this matter except on two occasions which are: 24/10/2019 and on 29th of October, 2019 when I had to attend official courses.

From the records of proceedings nowhere has prosecutor delayed in prosecuting this matter for up to a year neither has the court in anyway delayed trial of this matter. It should be noted that at the initial stage the 1st and 2nd Defendant did not have legal representative and after series of adjournments with the 1st and 2nd Defendants informing the court emphatically that they had engaged the services of a lawyer but when no legal counsel showed up to defend them, the court had to intervene and write to the office of Legal Aid to furnish the 1st and 2nd Defendants with legal representation. It should also be noted that the 3 Defendants have 3 different lawyers and after the examination in chief of PWI, each lawyer to each Defendant took turns in cross examining PWI. The court does not have the powers to "hasten" the prosecution to conclude his examination-in-chief nor "hasten" the Defendants 3 separate counsels to conclude cross-examination particularly in a charge of capital punishment as the court is enjoined to dispense justice fairly after having given all parties fair hearing.

Consequently whether the court gives Section 161 (2) (b) a conjunctive or disjunctive view; Learned counsel to the Applicant has not been able to prove that there has been extraordinary delay in the investigation, arraignment and prosecution for a period exceeding one year, hence that grounds cannot in my view entitle the Defendant/Applicant to bail.

I will take the 2nd and 3rd grounds together. Learned silk submitted that throughout PWI examination in chief, prosecution did not tender any evidence against 3rd Defendant that rather all exhibits tendered through 3rd Defendant were tendered on behalf of 3rd Defendant through PWI. In summary, that from the testimony of PWI in his examination-in-chief it is obvious that 3rd Defendant is being prosecuted for the various posts he posted on his Due Process Advocacy facebook account to the effect that the police were allegedly negligent in their investigation of the deceased by not beaming their search light on PWI who is the husband of the deceased.

In law the burden of proof in criminal cases is 100% on the prosecution and never shifts. The prosecution has a duty to field witnesses during trial who will give evidence in support of the charge proffered against the Defendant. At the point of calling on witnesses to testify, the prosecution is not under any obligation to field its witnesses in any particular order hence star witness for the prosecution might not necessarily be PWI and vice versa. Hence calling on the court to view the evidence of PWI as a determinant point for granting the Applicant bail is not only unprocedural but against the principle of fair hearing particularly as PWI is yet to conclude his cross-examination and more particularly because prosecution is yet to conclude its case as prosecution has rightly informed the court that they have more witnesses to field before this court.

Consequently, the 2nd & 3rd grounds postulated by the learned counsel to the Defendant/Applicant has failed to convince the court to exercise its discretion in favour of the Defendant/Applicant.

Bail is consequently refused.

Parties: Defendant is present.

Appearances: E. A. Ochayi for the Complainant. M. A. Lawal (Mrs) for the 1st Defendant. S. A. Adula for the 2nd Defendants. J C. Njikonye for the 3rd Defendant appearing with Ayodele Aritiowa. Prof. Agbo Maduka appearing with N. P. Anumdu watching brief for the nominal Complainant.

HON. JUSTICE M. OSHO-ADEBIYI

JUDGE

4TH JUNE, 2020