

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT GUDU - ABUJA

ON THURSDAY THE 11TH DAY OF JUNE, 2020.

BEFORE HIS LORDSHIP ; HON. JUSTICE MODUPE OSHO-ADEBIYI

SUIT NO. CR/40/2019

MOTION NO: M/6455/2020

COMMISSIONER OF POLICE ----- CLAIMANT

AND

1. PETER WILLIAMS OKWE 'M' 28YRS

2. JOSEPH PHILIP 'M' 23YRS -----DEFENDANTS/APPLICANTS

RULING

The Defendants were arraigned before this court on the 14th day of March 2020 on a two court charge alleging the offences of armed robbery and attempted armed robbery punishable under the provisions of Section 6 (a) (c) and 2 (1)(2)(a)&(b) of the Robbery and Firearms (Special Provisions) Act, Cap. R11 Laws of the Federation of Nigeria 2004. They both pleaded not guilty to the charges and were ordered to be remanded in prison custody. Defendants have filed the instant motion wherein they seek the following reliefs:

1. An order admitting the Defendants/Applicants to bail pending trial and determination of the suit.

2. And for such further order or orders as this honourable court may deem fit to make in the circumstances.

The motion which is brought pursuant to the provisions of Sections 164 and 165 of the Administration of Criminal Justice Act 2015, Sections 35(4) and 36 of the Constitution of the Federal Republic of Nigeria 1999 as amended and under the inherent jurisdiction of this court is supported by a 6 paragraphed affidavit and a further 9 paragraphed affidavit both deposed to by one Philip Daniel the father of the 2nd Defendant. The application is further supported by a written address. In both affidavits, it is deposed in summary that: [a] the 2nd Defendant/Applicant is suffering with infectious diseases that has no medical personal and facility within the Kuje correctional facilities; [b] that if granted bail, they would not jump bail; [c] that they are ready and prepared to provide a reliable surety; [d] that if granted bail they would not interfere with ant further investigation I respect of this case; and [e] that for the healthy and safety of the Applicants and for decongesting the prisons and to promote the social distancing order of the government in prison. Counsel to the Applicants moved their motion and adopted their written address on the 11th of June, 2020.

The complainant who was duly served with the application and represented at the hearing did not file a counter affidavit. Counsel submitted that they leave it at the discretion of the court.

Learned counsel to the Applicants in his address raised a sole issue for determination to wit; “whether or not the Defendants/Applicants is

entitled to the reliefs sought”. Counsel submitted that the laws upon which this application is brought empowers the court to grant the reliefs sought. He urged the court to grant their application. He relied on the cases of **MARK V, EKE (2004) 5 NWLE (PT. 865) Pg. 54 at 947** and **KIDA V. OGUNMOLA (2006) 13 NWLR (Pt 947) Pg. 377**.

I have taken my time and perused meticulously the affidavit evidence in support of the application for bail by the 1st and 2nd Defendants/Applicants and the written address filed by counsel in support of the application. Therefore, the issue for determination in my opinion is;

“Whether the Court can grant the application for bail filed by the Defendants/Applicants before this Honourable Court”.

It is worthy of note that, bail pending trial is a Constitutional right of an accused person this is in line with the Constitutional provision that relates to presumption of innocence in favour of persons accused of committing Criminal offence. See **Section 36 (5) of the 1999 Constitution (As Amended)**.

In a similar vein, the grant or refusal of an application for bail is at the discretion of the Court, which like any other discretion must be exercised judicially and judiciously. See the case of **Alaya V. State (2007) 16 NWLR (pt. 1061) 483**. Furthermore, the law is settled that in the exercise of the discretion for bail pending trial, a Court must take into consideration some facts or conditions which will serve as a guide. The Supreme Court enumerated some of these factors in the case of **Suleiman V. C.O. P**

Plateau State (2008) 8 NWLR (pt. 1089) 98 at 317 – 318, paragraphs H – C, where it was held thus:-

“... the criteria to be followed in taking a decision on application for bail as laid down by this Court includes:

i. The nature of the charge

ii. The strength of the evidence which support the charge;

iii. The gravity of the punishment in the event of conviction;

iv. The previous Criminal record of the accused if any;

v. The probability that the accused may not surrender himself for trial

vi. The likelihood of the accused interfering with the witness or may suppress any evidence that may in- criminate him.

vii. The likelihood of further charge being brought against the accused and;

viii. The necessity to procure medical or social report pending final disposal of the case.”

The Court of Appeal held in **Uwazurike V. A. G. Federation (2008) 10 NWLR (pt. 1096) 444 at 461 – 462 paragraphs F – C** that:-

“... It should be noted that the factors listed above are not exhaustive in guiding any trial Court in granting or refusing bail pending trial. Also it is not necessary that all or many of these factors must apply in any given case even one factor may be applied in a particular case to guide trial Court in granting or refusing bail pending before it...”

The Applicants are alleged to have committed the offences of armed robbery and attempted armed robbery. The punishment for these offences as stipulated under **Section 1(2) of the Robbery and Fire Arms (special provisions) Act Cap. R11, Laws of the Federation of Nigeria 2004** is death. It follows therefore that by the nature of the charge, the Applicants are standing trial for a capital offence. As such, the law is trite that a person charged with a capital offence is not ordinarily entitled to bail until and unless he can show to the satisfaction of the court special or exceptional circumstances why bail is to be granted to him despite the gravity of the charge against him. See the case of **Abacha V. State (2012) 5 NWLR (pt. 761) 638 at 653 – 64 paragraphs H – A**. Thus the relevant provision that guides the consideration of bail where a Defendant is charged with a capital offence is **Section 161 of the Administration of Criminal Justice Act 2015**.

Section 161 (1) of the Administration of Criminal Justice Act 2015 provides:

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.

Section 161[2] thereof provides that for the purpose of exercise of discretion in subsection [1] above, “*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 question that comes to mind is, has the Applicants in the instant case shown any special or exceptional circumstance to warrant the grant of this application?

It was deposed to in the supporting affidavit that the 2nd Defendant/Applicant is suffering with infectious diseases that has no medical personal and facility within the Kuje correctional facilities. In that regard, the law is trite that ill health of an Applicant in an application for bail is a special circumstance for grant of the application. However, the law did not stop there but went further to state that a mere allegation or deposition in an affidavit of ill – health will not be sufficient justification for granting the application for bail. In this regard, I refer to the case of **Abacha V. State (2002) 4 MJSC pages 1 at 3 & 4 ratio 3 & 5** where the Supreme Court held that:-

“There is no general principle of law affording any accused person remanded in custody and awaiting trial, the right to a medical practitioner or medical facility of his choice, the special medical need of an accused person, whose prove state of health need special medical attention which the authority may not be able to provide is

a factor that may be put before the Court for consideration in the exercise of discretion to grant bail to an accused person. Such a need should not be brought to the Court by mere assertion of the accused or by his counsel, but on satisfactory and convincing evidence”

The Supreme Court went further to state that:-

“... where it is ought to lay claim to ill health as ground for an application for bail credible medical evidence given by an expert in the branch of medicine should be made available to the Court...”

See also, the case of **Fawhinmi V. State (1990) 1 NWLR (pt. 127) 486 at 496 – 497 paragraphs H – B, 498.**

Coming back to the instant case, the depositions in the supporting affidavit do not state the nature of the ill health neither did they state that the Kuje correctional facility does not have adequate facilities to administer treatment to the 2nd Applicant. The 2nd Defendant/Applicant has also failed to provide a doctor’s or medical report on the state of his health other than the mere depositions in the supporting affidavit. To this end, I am of the humble view that the Applicants has failed to show to the satisfaction of the Court the existence of special or exceptional circumstance as contemplated by law to warrant the exercise of the Court’s discretion in their favour. The onus rests squarely on the Applicants to show the existence of special circumstance(s) that justify the exercise of the court’s discretion in their favour. **Section 161 of the Administration of Criminal Justice Act 2015** specifically provides for consideration of bail where a capital offence is alleged as in the instant case.

I therefore answer the question in the negative. It is my considered opinion that the Applicants have not made out a case for the grant of this application and I so hold.

This application for bail fails and it is hereby struck out.

Parties: Complainant is absent. Defendants are present.

Appaerance: E. O. Ochayi holding brief of O. Udo for Prosecution. Z Gambo for Defendants/Applicants.

HON. JUSTICE M. OSHO-ADEBIYI

JUDGE

11TH JUNE, 2020