

**IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT JABI, ABUJA**

BEFORE HIS LORDSHIP: HON. JUSTICE D. Z. SENCHI

HON. JUDGE HIGH COURT NO. 13

COURT CLERKS: T. P. SALLAH & ORS

DATE: 13/07/2020

FCT/HC/ CR/56/2019

COMMISSIONER OF POLICE COMPLAINANT/RESPONDENT

AND

1. IDRIS MUSA '24 YRS' DEFENDANT/APPLICANT

**2. MATHEW DAMISA '32 YRS')
3. SILAS GAMBO '32 YRS') DEFENDANTS/APPLICANTS**

RULING

The Defendants herein were arraigned on 19th February, 2020 on charges of the commission of the offences of criminal conspiracy, culpable homicide punishable with death and armed robbery under the provisions of Sections 97 and 221 of the Penal Code and Section 1(2)(a) &(b) of the Robbery and Firearms (Special Provisions) Act, CAP. R11. Laws of the Federation of Nigeria, 2004 respectively. The Defendants pleaded not guilty to the charges and were ordered to be remanded in prison custody. The Defendants have now brought various applications to be admitted to bail pending their criminal trial.

By Motion on Notice No. M/5052/20 dated 5th February,2020 and filed on 6th February,2020 brought pursuant to the provisions of Sections 35 and 36(5) of the 1999 Constitution of the Federal Republic of Nigeria (as amended), Sections 158 and 161(1) and (2)(a) & (c) of the Administration of Criminal Justice Act 2015 as well as under the inherent jurisdiction of this Court, the 1stDefendant prays this Court for the grant of the following reliefs:-

1. An Order of the Honourable Court admitting the 1stDefendant/Applicant to bail pending the determination/trial of this suit.
2. And for such further order or order(s) this Honourable Court may deem fit to make in the circumstance.

In support of the application the 1stDefendant/Applicant filed an Affidavit of 14 paragraphs deposed to by one Alhaji Musa Ibrahim, his father and accompanied by one exhibit marked exhibit A. Counsel to the 1stDefendant/Applicant also filed his Written Address dated 5th February, 2020 which he adopted as his oral arguments in support of the application.

Also by the 2ndMotion on Notice No. M/5152/20 dated 3rd February, 2020 and jointly filed on 5th February, 2020 by the 2nd and 3rdDefendants pursuant to the provisions of Sections 35 and 36(5) of the Constitution of the Federal Republic of Nigeria 1999 (as amended), Sections 158, 161, 162 and 165 of the Administration of Criminal Justice Act 2015 as well as under the inherent jurisdiction of this Court, the 2nd and 3rdDefendants pray for the grant of the following reliefs:-

1. An Order of the Honourable Court granting bail to the 2nd and 3rdDefendants/Applicants pending the hearing and determination of the substantive case against them.
2. An Order of this Honourable Court granting bail to the 2nd and 3rdDefendant/Applicants on such terms and condition that the Honourable Court may deem fit in the circumstance of the matter.
3. And any other orders as this Honourable Court may deem fit to make in the interest of justice.

The grounds of the application are set out on the face of the motion paper. The 2nd and 3rdDefendants/Applicants' application is supported by an affidavit of 6 main paragraphs deposed to by one Stone Enenche, a litigation secretary to the Counsel representing the 2nd and 3rdDefendants/Applicants and he also

filed his written address dated 3rd February, 2020 in support of their application.

Although the Complainant/Respondent was served with copies of both applications, its Counsel did not file anything in response to either of the applications. Counsel was also absent without explanation at the hearing of both applications. The matter was adjourned for Ruling on both applications.

Counsel to the 1st Defendant/Applicant formulated the following two issues for the determination of his Motion on Notice No. M/5052/20 for bail:-

- a. Whether the 1st Defendant/Applicant is entitled to be admitted on bail considering the serious health challenges he is facing in the custody of the Complainant/Respondent.
- b. Whether the 1st Defendant/Applicant is entitled to be admitted on bail having regards to the offences being charged and the facts and circumstances of this case.

In respect of their Motion No. M/5152/20, the 2nd and 3rd Defendants/Applicants' Counsel formulated the following sole issue for determination:-

"Whether from the surrounding circumstances of this case, whether this Honourable Court has discretion to grant this application and admit the Applicants to bail."

In order to determine the two applications I adopt the above issues formulated by Counsel in respect of each application.

- a. Whether the 1st Defendant/Applicant is entitled to be admitted on bail considering the serious health challenges he is facing in the custody of the Complainant/Respondent.
- b. Whether the 1st Defendant/Applicant is entitled to be admitted on bail having regards to the offences being charged and the facts and circumstances of this case.

The facts which the 1stDefendant/Applicant relied on for his application for bail pending trial are asset out in his affidavit in support of the application. It is averred therein that the 1stDefendant/Applicant was arrested and later detained at Special Anti-Robbery Squad (SARS) on 5th July,2019 on allegation of being in possession of a stolen Huawei Phone believed to belong to a deceased brought to him for repairs by the 2ndDefendant in this case. That the 2ndDefendant who traced the supplier of the phones to the 3rdDefendant has also been arrested and detained. That the said 2ndDefendant had admitted in his statement to the Complainant that he had given four different phones to the 1stDefendant/Applicant. That the 1stDefendant/Applicant is seriously sick and has always been fainting in the custody of the Complainant/Respondent. Exhibit A is a copy of medical report from the Hospital. That the 1stDefendant/Applicant's father always visits him to provide him with drugs and is sometimes called by officers of the Complainant/Respondent to bring drugs when the 1stDefendant/Applicant's health condition worsens. That the 1stDefendant/Applicant has no previous record of commission of any offence and if granted bail, will not interfere with prosecution witnesses or repeat the offences charged.

Arguing the two issues formulated in his address, learned Counsel to the 1stDefendant/Applicant submitted that although the offences for which the 1stDefendant/Applicant is being charged are not ordinarilyailable, the exceptional circumstances of his health condition entitles him to be admitted on bail by this Court. He relied on the provisions of Sections 35 and 36(5) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) as well as Sections 158 and 161(1) and (2)(a) & (c) of the Administration of Criminal Justice Act 2015. He further relied on a plethora of decided cases including **SULEIMAN V. C.O.P PLATEAU STATE (2008) 8 NWLR (PT.1089) P. 298**. Counsel posited that the 1stDefendant/Applicant has no criminal record and urged this Court to grant him bail. He relied on the decision of the Supreme Court in **EYE V. FRN (2018) LPELR-43599(SC)** on the need for the Court to give consideration to an affidavit in support of an application for bail over and above the proof of

evidence. He finally urged this Court to grant the 1stDefendant/Applicant bail on very liberal terms and conditions considering his standing in the society.

In the resolution of the issues for determination, it is pertinent to note that the following have been held to be the criteria to be followed in taking a decision on an application for bail:-

- (a) the nature of the charge;
- (b) the strength of the evidence which supports the charge;
- (c) the gravity of the punishment in the event of conviction;
- (d) the previous criminal record of the accused, if any;
- (e) the probability that the accused may not surrender himself for trial;
- (f) the likelihood of the accused interfering with witnesses or may suppress any evidence that may incriminate him;
- (g) the likelihood of further charge being brought against the accused; and
- (h) the necessity to procure medical or social report pending final disposal of the case.

See the case of ***SULEMAN V. C.O.P., PLATEAU STATE (2008) 8 NWLR (PT.1089) P. 298 at PP. 317 – 318 Paragraphs. H-B.*** See also the case of ***EZIKE V. STATE (2019) LPELR-47711(CA).***

In the instant case, the 1stDefendant/Applicant has been arraigned on charges of having committed the offences of criminal conspiracy, culpable homicide punishable with death and armed robbery under the provisions of **Sections 97 and 221 of the Penal Code** and **Section 1(2)(a) & (b) of the Robbery and Firearms (Special Provisions) Act, CAP. R11. Laws of the Federation of Nigeria, 2004** respectively. Under those provisions, the punishment for the said offences is death upon conviction. The nature of the charge thus shows that the 1stDefendant/Applicant is standing trial for capital offences. The relevant provision that guides a consideration of bail where the suspect is charged with a capital offence such as in the instant

case is **Section 161 of the Administration of Criminal Justice Act, 2015.**

Section 161 of the Administration of Criminal Justice Act, 2015 provides as follows:-

"161.

- (1) *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.*
- (2) *For the purpose of exercise of discretion in subsection (1) of this section, "exceptional circumstance" include:*
 - (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."*

In the case of **EZIKE V. STATE (supra)** the Court of Appeal held per Umar JCA as follows:-

"I wish to state that it is not unusual for an accused person charged with a capital offence to be admitted to bail pending his trial, however, the offence of murder being of such a grievous nature, it is not in the interest of the society that an accused person facing a trial for murder should be released on bail as a matter of course unless special circumstances are shown by the accused to the satisfaction

of the Court. See **ABACHA V. THE STATE (2002) 5 NWLR (PT 761) 638.**"

See also the case of **ADELEKE V. STATE (2018) LPELR-45242(CA).**

Thus by the provisions of **Section 161 of the Administration of Criminal Justice Act, 2015** (ACJA), the onus rests squarely on the 1stDefendant/Applicant to show exceptional circumstance why this Court ought to exercise its discretion to grant him bail, which discretion this Court ought ordinarily not to exercise considering the capital offences for which the 1stDefendant/Applicant has been charged. This is the condition upon which this Court can exercise its discretion to grant the 1stDefendant/Applicant bail in the circumstances.

I have looked carefully through the 1stDefendant/Applicant's affidavit in support of his application for bail. His application for bail is clearly hinged on allegation of his ill health. It is alleged that he is sick and has been fainting in the custody of the Complainant/Respondent. Nothing is however mentioned in the affidavit in support as to what could be the cause of the 1stDefendant/Applicant's sickness. Exhibit A attached to the 1stDefendant/Applicant's affidavit is a photocopy of a Medical Report dated 28th February, 2019 from Asokoro District Hospital of the FCTA and signed by one Dr. Muhammed S.A for the Consultant Gastroenterology. The said Medical Report states that Idris Musa is being managed for vasovagal syncope and epilepsy with low blood pressure.

Section 161(2)(a) of Administration of Criminal Justice Act 2015 provides for ill-health as constituting exceptional circumstances for granting bail to a Defendant accused of committing a capital offence. Now while there is nothing before this Court to dispute that the person who signed the 1stDefendant/Applicant's Medical Report is '*a qualified medical practitioner employed in a Government hospital*' in accordance with **Section 161(2)(a)**, there is a further condition to be

satisfied in order to successfully establish ill-health as an exceptional circumstance for bail. In addition to proving ill-health as confirmed by a qualified medical practitioner employed in a Government hospital, the 1st Defendant/Applicant must also prove that there are no medical facilities to take care of his illness by the authority detaining him i.e. the Complainant/Respondent. See **Subsection 2(a) of Section 161 of ACJA 2015**.

In the case of **ABACHA V STATE(2002) LPELR15** the Supreme Court of Nigeria held thus:-

“It must be made quite clear that everyone is entitled to be offered access to good medical care whether he is being tried for a crime or has been convicted or simply in detention. When in detention or custody, the responsibility of affording him access to proper medical facility rests with those in whose custody he is, invariably the authorities. But it ought to be understood that the mere fact that a person in custody is ill does not entitle him to be released from custody or allowed on bail unless there are really compelling grounds for doing so. An obvious ground upon which bail would be granted for ill-health is when the continued stay of the detainee poses a possibility of a real health hazard to others, and there are no quarantine facilities of the authorities for the type of illness.”

See also **ADEDAPO ADENIGBAGBE V NIGERIA CUSTOMS SERVICE BOARD, (2018) LPELR 45337(CA)**.

There is however no such averment in the 1st Defendant/Applicant's affidavit in support of his application for bail. The averment in his affidavit that his father often visits him with medication and is sometimes called by officers of the Complainant/Respondent to bring drugs do not establish as a fact that the Complainant/Respondent does not have medical facilities to take care of the 1st Defendant/Applicant's illness. The Ipsedexit of the Applicant is not sufficient. It is however the responsibility of the authority in whose custody the 1st Defendant/Applicant has been remanded to provide adequate health care. In the

circumstances, the 1st Defendant/Applicant has failed to prove that the Complainant/Respondent does not have medical facilities to take care of his illness. In other words, he has thus failed to establish ill-health as an exceptional circumstance for consideration of his bail by this Court. Accordingly the application for bail pending trial is hereby refused and dismissed.

MOTION ON NOTICE NO. M/5152/20: BY THE 2ND AND 3RD DEFENDANTS/APPLICANTS:-

Whether from the surrounding circumstances of this case, whether this Honourable Court has discretion to grant this application and admit the Applicants to bail.

In support of Motion on Notice No. M/5152/20 jointly filed by them for bail, the 2nd and 3rd Defendants/Applicants averred in their affidavit in support that they were arrested on 10th July, 2019 and 24th October, 2019 respectively in Abuja. They denied the charge of culpable homicide punishable with death served on them. They alleged that they were never at the scene of the crime nor were incriminating exhibits recovered from their homes. That their statements were obtained under torture and there is nothing linking them to the commission of the offence. They averred that they will not jump bail, interfere with prosecution witnesses or commit any offence if granted bail by this Court. That the proof of evidence did not link any of them to the commission of the alleged offence.

Arguing his sole issue for the determination of their application for bail (i.e. Motion on Notice No. M/5152/20), the 2nd and 3rd Defendants/Applicants' Counsel submitted that notwithstanding that the offence for which they were charged is culpable homicide punishable with death, this Court is empowered to grant them bail. He relied on Section 161(2) and 162 of ACJA 2015. He contended that the 2nd and 3rd Defendants/Applicants have satisfied the necessary conditions for such bail. He posited that the facts surrounding the 2nd and 3rd Defendants/Applicants' arrest is based on speculation and suspicion as the proof of evidence

does not show proof that they committed the alleged offence. He urged this Court to carefully consider the proof of evidence before this Court. He cited the case of **GBOKO V. THE STATE (2007) NCC VOL. 6 P. 312**. Counsel said there is nothing in the proof of evidence linking the 2nd and 3rd Defendants/Applicants to the commission of the three counts charge preferred against them. He said this Court has unfettered discretion under Section 162(2) and (3) of ACJA 2015 in granting the instant application. He relied on the case of **ALH. ASARI DOKUBO-ASARI V. F.R.N (2006) NCC VOL. 4 P. 158**. He contended that the 2nd and 3rd Defendants/Applicants should be granted bail especially as they are still presumed innocent until contrary is proved. He also relied on a myriad of decided cases. He concluded his address by urging this Court to exercise its discretion in favour of the 2nd and 3rd Defendants/Applicants in the circumstances.

Now, the 2nd and 3rd Defendants/Applicants in the instant case are charged with the offences of criminal conspiracy, culpable homicide punishable with death and armed robbery under the provisions of **Sections 97 and 221 of the Penal Code and Section 1(2)(a) & (b) of the Robbery and Firearms (Special Provisions) Act, CAP. R11. Laws of the Federation of Nigeria, 2004** respectively. The punishment for these offences is death upon conviction. The 2nd and 3rd Defendants/Applicants are thus standing trial for capital offences.

I have earlier on examined the principles to be considered by the Court in an application for bail generally and specifically where the Applicant is standing trial for a capital offence. See the cases of **SULEMAN V. C.O.P., PLATEAU STATE (supra)** and **EZIKE V. STATE (supra)**. See also the provisions of **Section 161 of the Administration of Criminal Justice Act (ACJA) 2015**. There is no need going over that again. Suffice it however to simply reiterate that the onus rests squarely on the 2nd and 3rd Defendants/Applicants to show exceptional circumstance why this Court ought to exercise its discretion to grant them bail, which discretion this Court ought ordinarily not to exercise considering the capital offences for which the 2nd and

3rdDefendants/Applicants have been charged. This is the condition upon which this Court can exercise its discretion to grant the 2nd and 3rdDefendants/Applicants bail in the circumstances.

Learned Counsel to the 2nd and 3rdDefendants/Applicants has submitted in his address that this Court has unfettered discretion under **Section 162(2) and (3) of Administration of Criminal Justice Act (ACJA) 2015** to grant the instant application. I totally disagree. The referenced **Section 162** applies to application for bail where the Applicant is charged with an offence punishable with imprisonment for *a term exceeding three years*. In the 2nd and 3rdDefendants/Applicants' case, they are charged with offences punishable with death. The applicable provision of **ACJA 2015** is therefore **Section 161** and not **Section 162**. This Court does not have unfettered discretion to grant the 2nd and 3rdDefendants/Applicants bail in the circumstances. They have to establish exceptional circumstances for this Court to be able to exercise its discretion in their favour. The question is; have they?

I have looked carefully at the 2nd and 3rdDefendants/Applicants' affidavit in support of their application for bail pending their trial. They neither averred that they are suffering from any ill-health or there has been extraordinary delay in their case as constituting exceptional circumstances entitling them to bail as provided under **Section 161(2)(a) and (b) of Administration of Criminal Justice Act (ACJA) 2015**. No they didn't. The 2nd and 3rdDefendants/Applicants' averments in their affidavit is more to the effect that there is nothing linking them to the offences for which they have been charged before this Court as the proof of evidence before this Court contains no such proof. This is also their Counsel's stance in his address.

Now under the general principles regarding an application for bail, a Court before whom an application for bail pending trial has been brought is expected to give consideration to the strength of the evidence supporting the charge against the Applicant. See the case of **CHEDI & ANOR V. AG FEDERATION (2006) LPELR-11806(CA)** where the Court of Appeal held as follows:-

"Another factor to be considered by the learned trial Judge was the strength of the evidence against the Appellants. This, the learned trial Judge could do only by looking at the proof of evidence."

Thus, where an Applicant for bail pending a criminal trial establishes that there is no proof of evidence before the Court, it certainly qualifies as *'any other circumstances that the Judge may, in the particular facts of the case, consider exceptional'* under **Subsection 2(c) of Section 161 of ACJA 2015**.

In the case of **ANAEKWE V. C.O.P (1996) 3 NWLR (PT.436) P. 320** the Court of Appeal held that:-

"Therefore, where the prosecution merely parades to the Court the word "murder" without tying it with the offence, a Court of law is bound to grant bail and the only way to intimidate the Court not to grant bail is to prefer an information and proofs of evidence to show that there is a prima facie evidence of commission of the offence. A situation where there is no material before the trial Court to show that the appellant is facing a charge of murder, including proofs of evidence, certainly qualifies as a special circumstance in which the Court can grant bail"

Thus, in the cases of **ENWERE V. C.O.P. (1993) 6 NWLR (PT. 299) P. 333**, **CHINEMELU V. C.O.P. (1995) 4 NWLR (PT.390) P. 467**, **ANAEKWE V. C.O.P. (supra)** and **MUSA V. C.O.P. (2003) LPELR-7202(CA)** the Court of Appeal granted the Defendants (charged with murder) bail on the ground that the prosecution did not provide the Court with proof of evidence to support the charge of murder.

In the instant case however, ***the proof of evidence is before the Court*** as it has been filed along with the charge in accordance with the provisions of the **Administration of Criminal Justice Act (ACJA) 2015**. I have read through same.

It contains statements of witnesses to be called by the Complainant/Respondent at trial as well as all the three Defendants' statements to the Police, a medical certificate of death and copies of photographs. From the proof of evidence, it can be deduced that the case to be presented to this Court at trial by the Complainant/Respondent is that one Faith Iwowari had been killed and her mobile phone had been found in the possession of the three Defendants after her death. It is my humble opinion that there is a nexus between the three Defendants and the alleged deceased person in this case as to suggest commission of the offences of armed robbery and culpable homicide for which they have been charged in this case. I will say no more in respect of the evidence against the Defendants in the circumstances so as not to preempt their trial in this case. It would be wrong to preempt their trial at this stage and this Court would avoid doing this.

In the circumstances, I hold the view that the 2nd and 3rd Defendants/Applicants, who are not ordinarily entitled to bail under **Section 161 of the ACJA**, have not been able to establish any exceptional circumstance under which this Court may proceed to exercise its discretion to grant them bail pending their trial and I so hold. They are therefore not entitled to bail in the circumstances. Their issue for determination ought to be resolved against them. Their application for bail pending trial brought vide Motion No. M/5152/20 fails and it is accordingly dismissed. That is the judgment of this Court.

HON. JUSTICE D.Z. SENCHI
(PRESIDING JUDGE)
13/07/2020

Parties:- Absent.

M.I Zachariah:-For the 1st Defendant

D.J Alfa:-For the 2nd and 3rd Defendants.

Complainant's Counsel:-Absent.

Court:-Case adjourned to 20th October, 2020 for trial. Hearing notice beissued and served on the prosecuting Counsel. The Defendants be furtherremanded in the correctional centre.

Sign
Judge
13/07/2020