

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

**BEFORE: HON. JUSTICE O. C. AGBAZA**

**COURT CLERKS: UKONU KALU & GODSPower EBAHOR**

**COURT NO: 10**

**SUIT NO: FCT/HC/CR/350/2019**

**BETWEEN:**

**COMMISSIONER OF POLICE.....PROSECUTOR**

**VS**

**1. NDUBUISI KELVIN**

**2. ROSEMARY UdenyI**

**3. MOSES ANWAEGBE**

**4. MOSES DAVID.....DEFENDANTS**

**RULING**

By a Motion on Notice with Motion No: M/7353/2020 dated 3/6/2020 and filed 5/6/2020 by the 1<sup>st</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants, and a Motion on Notice with NO: M/10809/2020 dated 6/7/2020 and filed same day, by the 2<sup>nd</sup> Defendant, they are both praying for an order admitting the Defendants to bail, both applications are brought pursuant to Section 35, 36 (5) of Constitution of the Federal Republic of Nigeria 1999 as Amended; Section 158 and 162 of the Administration of Criminal Justice Act, 2018, Rule 8 of Covid – 19 Practice direction, 2020 and under the inherent jurisdiction of this court. Because, these two applications are predicated on the same Rules, this court had decided to do a composite Ruling on the two (2) applications.

The Applicant in this instance, are all charge on a two(2) count charge of the offence of Criminal Conspiracy and Armed Robbery, punishable under Section 6 (b) of the Robbery and Firearms (Special Provision) Act, Cap R11 LFN, 2004, and Section 1(2)(a) and (b) of the Robbery and Firearms (Special Provisions) Act Cap R11 LFN 2004. The reliefs sought are basically.

- (a) An Order of court admitting the Defendants to bail pending the final determination of his case.
- (b) Omnibus prayer.

In support of the applications, for the 1<sup>st</sup>, 3<sup>rd</sup> and 4<sup>th</sup> is a 21 Paragraph Affidavit Sworn to by Victor Unachukwu, with one(1) Exhibit marked as "A"; while for the 2<sup>nd</sup> Defendant, a 25 Paragraph Affidavit Sworn to by one Iduh .U. Udenyi, is in support of their application. Both applications are supported by a Written Address, which both Counsels adopt, in urging the court to grant.

The processes was served on the Prosecuting Counsel, in respect of the 1<sup>st</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendant, the Prosecution filed a 9 Paragraph Counter Affidavit and a Written Address in opposition, and urged the court to refuse the grant of the application, however, failed to react to the application of the 2<sup>nd</sup> Defendant. The implication of this is that, the second application remains unchallenged and uncontroverted. It is trite that a court can act on the facts as true and correct, if found credible. See Nigerian Agip Oil Co. Ltd Vs Ogini & Ors (2017) LPELR. 42663 (CA).

In the Written Address of 1<sup>st</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants settled by U.V. Egelamba Esq. only one (1) issue was distilled for determination which is; whether this Honourable Court has the powers to grant this application.

In the Written Address of the 2<sup>nd</sup> Defendant, settled by C. M. C. Onuoha Esq. only one (1) issue was distilled for determination, which is; whether the 2<sup>nd</sup> Defendant/Applicant is entitled to the reliefs sought.

Both Counsel canvassed, that by the provisions of the Section 35, 36(5) of Constitution of Federal Republic of Nigeria 1999 and Section 158, and 162 of ACJA, 2018 and relevant judicial authorities cited, this court has the discretion powers to grant bail, under exceptional circumstances, in this case relied on the health conditions of some of the Defendants, in particular 1<sup>st</sup> Defendant, wherein a medical prescription was attached and the 2<sup>nd</sup> Defendant. And reliance placed on Rule 8 of Covid -19 Practice directions in urging the court to grant the reliefs sought.

On the other hand, the Prosecution Counsel, in respect of the 1<sup>st</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants submits that granted that the court can grant bail in exercise of its discretion to do so the Applicant must place before it substantial facts, more so the offence for which the Defendant are charged carries death sentence. That in this instant, the Applicant has failed to comply with the Provisions of Section 161(2) of the ACJA, to enable this court exercise that discretion in their favour. Therefore, urged the court to refuse this application.

I have carefully considered these instant applications, the affidavit evidence, submits of all counsel, judicial authorities cited and find that there is only one (1) issue that calls for determination, which is;

“Whether or not the court can in this instant case, grant the reliefs sought based on the facts presented before it”

In the consideration of an application for bail, the primary consideration is the exercise of the courts discretion, which must be done judicially and judiciously in line with the principles set out in Plethora of Judicial authorities. See Ogbuoma Vs F.R.N (2011) 12 NWLR (PT. 1260) Pg. 100 @ 104; Anachebe Vs Ijeoma (2014).

Granted that the guideline are not exhaustive, the court must consider every details provided by the Applicants on the affidavit in support.

In this instant, for the 1<sup>st</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendant, the Applicants by Paras 5 – 14 of their supporting affidavit and Exhibit “A”; stated facts that would assuage this court to grant the reliefs sought. on the other hand, the prosecution, in Paras 4, 8, of their counter – affidavit stated facts to assuage the court to refuse this application.

In respect of the 2<sup>nd</sup> Defendant application, the Applicant by Paras 7 – 19 of their supporting affidavit, stated facts that would assuage this court to grant the reliefs sought, there was no counter.

It must be noted that the court has earlier refused the application of these Applicants and granted accelerated hearing and the case has progressed,

save for the Covid – 19. It is against this, that this present application is brought for another consideration.

A clear perusal of the facts presented to urge the court to contend are based on exceptional circumstance, bordering on health of some of the Applicant, in particular the 1<sup>st</sup> Defendant. Wherein medical prescription was exhibited and fact that the 2<sup>nd</sup> Defendant has medical challenge. In both instances, no medical certificate was tendered to show that the medical challenge in such that the correctional facility cannot handle what is before the court in respect of the 1<sup>st</sup> Defendants is a medical prescription and no more, while there is no medical certificate. It is the court firm view that for a court to exercise its discretion on exceptional circumstance, the Applicant ought to furnish the court with sufficient facts to enable it do so. This is not the case here, especially when the 2<sup>nd</sup> count against the Defendant carries death sentence, if it found guilty.

In all of these, without intending to jeopardize the right of the Applicants over the presumption of innocence prescribed by the law, it is the view of this court, that this application be refused. The earlier stand of the court for accelerated hearing still stands and continuing. Accordingly, this application of the 1<sup>st</sup> – 4<sup>th</sup> Defendants is hereby refused.

**HON. JUSTICE O. C. AGBAZA**

Presiding Judge

30/11/2020

**APPEARANCE:**

FIDELIS OGBIBE FOR PROSECUTION

U. V. EGELEMBBA FOR THE 1<sup>st</sup>, 3<sup>rd</sup> AND 4<sup>th</sup> DEFENDANT  
OLUSEGUN OYEWOLE FOR THE 2<sup>nd</sup> DEFENDANT