

**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

COURT CLERKS: T. P. SALLAH & ORS

COURT NUMBER: HIGH COURT NO. 12

**DATE: 7/10/2020 FCT/HC/CR/523/2019
 FCT/HC/M/9988/2020**

BETWEEN:-

INSPECTOR GENERAL OF POLICE-----COMPLAINANT

AND

ADEMUWAGUN ALADEGBAMI----- DEFENDANT

RULING

The Defendant/Applicant filed the instant motion on notice pursuant to sections 35 (1), (4) and 36 (5) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) sections 158 and 162 (a)-)f) of the Administration of Criminal Justice Act 2015 and under the inherent jurisdiction of this Honourable Court. The application prays the Court for the following:-

- (1) An order admitting and granting the Defendant bail pending the determination and conclusion of the substantive case;
- (2) And for such further order(s) as the Honourable Court may deem fit to make in the circumstances.

The grounds upon which the instant application is predicated are set out on the face of the motion papers and numbered 1-6. The application for the bail of the Defendant is further supported with an affidavit of 18 paragraphs duly deposed to by the Defendant himself. Attached to the 18 paragraph affidavit are two exhibits

marked as exhibits A and B respectively. The Defendant's Counsel also filed a written address in compliance with the Rules of this Court.

In response to the Defendant's bail application the Complainant filed a counter affidavit of 23 paragraphs sworn to by one Inspector Joshua Yohanna of Nigeria police Force on 23rd September, 2020. Learned prosecuting Counsel also filed a written address.

On 24th September, 2020, the application was heard and argued and the respective Counsel adopted their processes in the instant application.

The Defendant's Counsel in his written address, set out a sole issue for determination of the instant application as follows:-

" Whether or not the Court can exercise its discretion in granting the Defendant/Applicant bail pending the determination of his trial."

The Complainant's Counsel on the other hand formulated two issues for determination thus:-

- (1) Whether the Defendant can be granted bail without a valid affidavit presented before this Court stating reasons why he is so entitled to bail in the circumstances.
- (2) Considering all the circumstances of this case, will it be in the interest of justice to grant the Defendant bail pending the determination of this case.

To resolve the issues in the present application, I will adopt the issue distilled for determination by the Defendant's Counsel with little modification as follows:-

"Whether or not, considering all the circumstances in this case, the Honourable Court can exercise its discretion in granting the Defendant/Applicant bail pending the determination of his trial."

In arguing his issue for determination, the learned Counsel to the Defendant submitted in his written address that the intention of this application is to secure the temporal freedom or release of the Defendant/Applicant as provided by section 158 of the Administration of Criminal Justice Act 2015. Learned Counsel however submitted that the grant of this application is at the discretion of the Court. He relied on the case of **NABORE**

PROPERTIES LTD V PEACE- COVER (NIG) LTD,(2015) 2 NWLR (pt 1444) page 472.

Learned Counsel further submitted that though bail is subject to the discretion of the Court, he however submitted that bail is a constitutional right as section 36 (5) of the 1999 Constitution (as amended) that all persons accused of committing a crime are presumed innocent until proven guilty. He relied and cited the cases of **IDOWU FRN (2012)11 NWLR (pt 1312) page 453 paragraphs C-D and KANU V FRN (2017) 10 NWLR (pt 1572) page 133 paragraph G.**

Learned Counsel submitted that from the affidavit evidence of the Defendant/Applicant, the Applicant is willing to abide by the provisions of section 162 of the Administration of Criminal Justice Act 2015. And that the Defendant/Applicant's averments in the affidavit, he has satisfied the conditions to be admitted to bail. Counsel also relied on the case of **YUNUS V FRN (2015) 10 NWLR (pt 1466) page 100p paragraphs C-H.**

In conclusion, learned Counsel submitted that the Defendant will abide by the conditions for bail and he will not jump bail and he will attend his trial.

On the otherhand, in arguing the two issues formulated by the complainant/Respondent, the learned prosecuting Counsel in his first issue submitted that an application for bail pending trial, the Applicant has the onus of placing material facts in his affidavit before the Court for consideration. He relied on the cases of **ANI V STATE, (2002) 1 NWLR (citation and completely supplied) and ALHAJI MUJAHID DOKUBO-ASARI V FRN(2007)12 NWLR (pt1043) at 320.**

In the instant case learned prosecuting Counsel submitted that the present affidavit in support of the application for bail of the Applicant is neither deposed to by the Applicant personally or by any other person because the deponent is in custody and the facts as provided cannot be within the personal knowledge and thus contrary to section 117 of the Evidence Act. Learned prosecuting Counsel relied further on the cases of **ADENLE V OLUDE, (2002) 18 (pt799) page418(report not provided) and OLATUNJI V FRN (2003) 3 NWLR (pt 807) page 406.**

The prosecution submitted that the affidavit of the Defendant/Applicant was not headed in the Court and in the course or matter as provided by section 117 (1) (a) of the Evidence Act and that the present Applicant is one Queen ChinonsoAkoli. He finally submitted on the first issue that this affidavit is incompetent.

On the second issue, the prosecution argued that assuming the affidavit is competent, he however submitted that considering the circumstances of this case the Defendant/Applicant is not entitled to bail because of the nature of the offence the Defendant/Applicant is charged with and severity of the punishment should he be found guilty is not entitled to bail. He relied on the cases of **ADAMU SULEMAN MOHAMMED & ANOR V C.O.P PLATEAU STATE, (2008) 8 NWLR (Pt1089) page 298 and BAMAIYI V STATE (2001) 4 SCNJ 103.**

The prosecution further contended that during investigation of this case the Defendant/Applicant displayed tendencies of evading trial as the Defendant/Applicant has been at large and he ignored all the invitations from the police and the surety that took the Defendant/Applicant on bail from the police was arraigned for the offence of screening of an offender before the Magistrate Court. He stated further that if the Defendant/Applicant is granted bail, there is high possibility that the Defendant/Applicant will definitely jump bail and he will not be available for trial.

In conclusion, the learned prosecuting Counsel urged me to refuse bail.

To resolve the instant application for bail, I will and I hereby adopt the issue for determination as set out by the Defendant/Applicant's Counsel thus:-

"Whether or not the Court can exercise its discretion in granting the Defendant/Applicant bail pending the determination of his trial"

Before I proceed to resolve the issues as to whether to grant or refuse this application, let me quickly answer the objection raised by the prosecution that the affidavit of the Defendant/Applicant was neither signed by the Defendant/Applicant or any other person because the Defendant/Applicant was in custody of the police and that the affidavit offends section 117 (1) (a) of the Evidence Act, 2011(as amended).

Firstly, I have perused the counter affidavit of the Respondent and I was unable to lay my hands on any deposition by the Respondent that the affidavit in support of the instant application was not signed by the Applicant. The Defendant/Applicant at paragraph 11 of the supporting affidavit deposes thus:-
(11) that I am coming to this Court from the police hospital where I was admitted since yesterday."

And a close perusal of the supporting affidavit, it reveals that the Defendant/Applicant was before the Commissioner for Oaths of the Registry of this Court wherein the affidavit was sworn to. In other words, by the affidavit being deposed to before a Commissioner for Oaths of the registry of this Honourable Court, there is a presumption of regularity that the instant affidavit was duly sworn to by the Defendant/Applicant. This is to say when any judicial or official act is shown to have been done in a manner substantially regular, it is presumed that formal requisites for its validity were complied with. See sections 150 and 168 of the Evidence Act, 2011 (as amended) and the case of **JOHN NWAGHODOD & ORS V STELLA NWAGHODO, (2017) LPER 42672(CA)**.

In the instant case therefore, there is no averment in the counter affidavit of the complainant/Respondent to rebut the presumption that the Court process, i.e. affidavit filed in support of application was not duly deposed to before a person authorized. I therefore hold the view that affidavit was duly deposed to by the Defendant/Applicant and before a person authorized in law and I so hold.

The learned prosecuting Counsel also raised the fact that section 117(1) (a) of the Evidence Act, 2011 (as amended) was not complied with in that the Defendant/Applicant in the case is not Queen Chinonso Akoli.

Now I quite agree with the learned prosecuting Counsel because *section 117 (1) (a)(b) and (c) provides thus:-*

- "117(1) Every affidavit taken in a cause or matter shall;*
- (a) Be headed in the Court and in the cause or matter;*
 - (b) State the full name, trade or profession, residence and nationality of the deponent; and*

(c) *Be in the first person, and divided into convenient paragraphs numbered consecutively.*”

In both the substantive and the present application, the cause or matter is between the commissioner of police as the complainant/Respondent and AdemuwagunAladegbami as the Defendant/Applicant. However, the instant motion on notice shows the complainant/Respondent and one QueenChinonsoAkoliDefendant/Applicant. In other words on the face of the affidavit, it is defective in form and not in substance. Section 113 of the Evidence Act states:-

“The Court may permit an affidavit to be used, notwithstanding that it is defective in form according to this Act, if the Court is satisfied that it has been sworn before a person duly authorised.”

Firstly, it is the law that where an affidavit is found to be defective as a result of an omission or inaction, the defective affidavit containing the error may be amended and re-sworn by leave of Court. And it has been held that the rationale of allowing such amendment is to attain substantial justice.

In the instant case the substance of taking or deposing to an affidavit by AdemuwagunAladegbami, who is the Defendant in the cause or matter with the complainant, in the same affidavit was sworn to in the first person, with his full name and address particulars when he states at the beginning of the affidavit thus- I, AdemuwagunAladegbami..... and it was deposed to by a person authorized to administer oath.

Thus, therefore, having earlier ordered that the error be amended, I hold the view that the affidavit in support of application is competent and I so hold.

Having determined the seeming objections raised by the Complainant/ Respondent in the instant application, I will now proceed to determine the main issue and resolve same.

Firstly, as submitted and agreed by both Counsel to the respective parties, it is correct that granting bail pending trial is discretionary. The Court however has to exercise its discretion on bail matters judicially and judiciously and such exercise must not be arbitrary. In other words, for the Court to exercise its discretion, the Applicant seeking bail must depose in his affidavit

material facts to convince the Court to exercise its discretion in his favour. Apart from the affidavit to support the exercise of discretion by the Court, there are also statutory provisions that would provide a guide to the Court in admitting an Applicant to bail pending trial.

Sections 158 and 162 of the Administration of Criminal Justice Act, 2015 make provisions for the bail of a person suspected to have committed an offence to be admitted to bail pending trial.

Section 158 provides:-

" When a person who is suspected to have committed an offence or is accused of an offence is arrested or detained, or appears or is brought before a Court, he shall, subject to the provisions of this part, be entitled to bail."

Section 162 of the Administration of Criminal Justice Act, 2015 further provides:-

"A Defendant charged with an offence punishable with imprisonment for a term exceeding three years shall, on application to the Court, be released on bail except in any of the following circumstances:-

- (a) Where there is reasonable ground to believe that the Defendant will, where released on bail, commit another offence;
- (b) Attempt to evade his trial;
- (c) Attempt to influence, interfere with, intimidate witnesses and

Interfere in the investigation of the case;

- (d) Attempt to conceal or destroy evidence;

- (e) Undermine or jeopardize the objectives or the purpose or the functioning of the Criminal Justice Administration, including the bail in question.

The Constitution of Nigeria 1999 (as amended) especially sections 35 (4) and (5) guarantees to all persons accused of having committed a crime, the right to be presumed innocent until proven guilty. In the case of **IDOWU V FRN (2011) LPELR 3793**, the Court of Appeal held:-

"To safe guard that presumption and to ensure that no person is incarcerated unless convicted after having

been found guilty by a Court of competent jurisdiction; the Constitution has further guaranteed to persons arrested and detained upon reasonable suspicion of having committed a crime the right to bail by virtue of section 35 (4) of the Constitution."

The Appeal Court further held in the same case thus:-

"However, there are statutory and procedural laws put in place governing the grant or refusal to grant such bail."

I had earlier produced the relevant provisions of the procedural law i.e sections 158 and 162 of the Administration of Criminal Justice Act, 2015 that will answer the instant application for bail pending trial.

By the affidavit of the Applicant at paragraphs 12,13,14,15 and 16, the Applicant deposes to facts to the effect that he did not commit the offence, granting of bail will enable him continue to receive his medication, that he will not jump bail and will be available in Court to face his trial; that he will not interfere or prevent police investigation and that he will provide credible sureties.

The Complainant/Respondent on the otherhand, deposes at paragraphs 14-16,18,19 and 20 of their counter affidavit that the Defendant was taken to the police medical health centre where his blood pressure was normalized and he was asked to have a bed rest, and that the defendant has no serious medical issues; that the conduct of the Defendant during investigation of this case revealed that the Defendant will evade trial and that he has always interfered with the police investigation of this case. The Complainant/ Respondent further avers at paragraphs 5,6,7,8 and 12 of the counter affidavit antecedents of the Defendant/Applicant's evasiveness and the efforts taken by the police to arrest and arraigned the Defendant/Applicant before this Honourable Court.

I have perused closely the facts contained in both affidavits i.e that of the Defendant/Applicant and the Complainant/Respondent. I have in particular seen the depositions of the Complainant/respondent and their seeming fear or apprehension that if the Defendant/Applicant is released on bail, he will jump bail, not be available for his trial and he is likely to leave

the shores of this country, Nigeria. I share the sentiments expressed by the learned prosecuting Counsel in their counter affidavit especially the records of this Court show that this case came up in Court severally for arraignment of the Defendant/Applicant but the police could not trace him and even the surety that took him on bail at police station could not trace him and the surety was eventually arraigned before a Magistrate Court for the offence of screening of an offender. Despite these facts at our disposal however, the Constitution presumes the Defendant innocent until proven guilty. I have also carefully looked at the nature of the offence and the punishment thereto. And the Court of Appeal, in the case of **CHIEF OLABODE GEORGE & ORS V FRN, (2010) LPER 43088** says:-

"I wish to note that before conviction, bail is granted as of right to an accused person standing trial notwithstanding the gravity of the offence committed. This is because there is a constitutional presumption in favour of the liberty and innocence of the individual. However, after conviction bail is no longer granted as of right because the constitutional presumption of innocence is gone by virtue of the conviction so also the presumption in favour of liberty"

It is trite law also that even in capital offences that the punishment carries death sentence, because of the constitutional provision of presumption of innocence until proven guilty, an accused or Defendant is granted bail under certain circumstances. In the instant case by virtue of sections 158 and 162 of the Administration of Criminal Justice Act, 2015, and taking into account information against the Defendant/Applicant, the Defendant/Applicant is entitled to enjoy his constitutional right to bail. It will certainly amount to travesty of justice to deny the Defendant/Applicant bail pending his trial in view of section 36(4) and (5) and of the 1999 Constitution and section 162 of the Administration of Criminal Justice Act, 2015.

Accordingly, bail is hereby granted to the Defendant/Applicant pending his trial on the following terms:-

- (a) The Defendant/Applicant is admitted to bail in the sum of N10,000,000.00 and two sureties in like sum;

- (b) One of the sureties must deposit title documents of any property in Abuja worth the sum of N120,000,000.00.
- (c) The owner of the property shall in addition to the deposit of title documents, execute documents of transfer of the property and deposit same in Court.
- (d) In the event of the Defendant failing to appear in Court, the property in which title documents are deposited would be sold and compensation paid where necessary;
- (e) The genuineness of the title documents must be verified and ascertained by the complainant and the Registrar of this Court with the Federal Capital Development Authority Lands Registry.

HON. JUSTICE D. Z. SENCHI
(Presiding Judge)
7/10/2020

U.B Ogara:-For the Defendant/Applicant.

Sign
Judge
7/10/2020