

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT MAITAMA

BEFORE HIS LORDSHIP : HON. JUSTICE Y. HALILU
COURT CLERKS : JANET O. ODAH & ORS
COURT NUMBER : HIGH COURT NO. 22
CASE NUMBER : CHARGE NO: CR/26/16
DATE: : TUESDAY 20TH OCTOBER, 2020

BETWEEN

COMMISSIONER OF POLICE

**} COMPLAINANT/
RESPONDENT**

AND

1. BABANGIDA SULE
2. SAMUEL EMMANUEL

**} DEFENDANTS/
APPLICANTS**

RULING

The Defendants/Applicants approached this Honourable Court for an Order varying the terms/conditions of the bail granted to the Applicants on 6th February, 2020.

In support of the application is a 5 paragraph affidavit duly deposed to by One Grace Antai, a Litigation Secretary in the Law Firm of the Applicant's counsel.

It is the deposition of the Applicant that on the 6th day of February, 2020, Applicants were granted bail.

That the terms of the bail is that the Applicants should produce two sureties who should be of the rank of Director in the service or responsible citizens

who must be resident within the FCT and also have Certificate of Occupancy.

Applicants aver that since the grant of the bail every efforts to meet the terms have failed as the Registry continue to reject the sureties for one reason or other.

That it will be in the interest of justice to grant this application.

A written address was filed wherein a sole issue was formulated for determination to wit; *whether the Defendants/Applicants are entitled to the exercise of the Courts discretion varying the conditions of the bail granted to them on the 6th of February, 2020.*

Arguing on the above, learned counsel cited Section 6(6) of the Constitution of Federal Republic of

Nigeria (FRN) and Section 165(1) of Administration of Criminal Justice Act 2015. To submit that the conditions for bail in any case shall be at the discretion of the court with due regard to the circumstances of the case and shall not be excessive.

Learned counsel submit further that the court must exercise its discretion judicially and judiciously. *NDUKWE – ANYANWU JCA Page 486 – 487.*

Court: It is instructive to note that bail was earlier granted Defendants/Applicants on the 6th February, 2020 but were unable to meet the conditions hence the application.

Bail is a constitutional right of an accused person and it is contractual in nature. The effect of granting bail is not to set the accused free for all time in the criminal process but to release him from the custody of the law and entrust him to appear at his trial at a specific time and place.

Indeed, application for bail pending trial is generally a matter of course unless some circumstances militate against the grant of it, bail pending trial is a constitutional right, the burden therefore is on the prosecution who opposes bail to prove that facts relied upon by the Applicants, do not warrant granting the application. This is because of the constitutional presumption that a person is innocent until proved guilty. Section 36 (5) of the 1999 constitution as amended, is instructive.

In the case under consideration, Defendants who are already on bail stated that they could not meet the conditions for their bail hence this application.

A court has discretion to admit an accused to bail and or vary the bail condition or not and the definition of discretion is base on personal judgment and conscience of the judge.

My conscience as a judge has been appealed in favour of the accused/Applicants.

The conditions attached to the bail earlier granted is hereby varied, as follows:-

- a. Each accused shall provide two sureties who must be level 12 and above in any Federal Agency, who must produce photocopy of Identity Card and evidence of their last promotion.

- b. The surety shall write a letter of undertaking to produce the Defendant in court till the conclusion of the case.

Justice Y. Halilu
Hon. Judge
20th October, 2020

APPEARANCES

MIMIDO P.A – for the Defendants.

Prosecution not in court.