

**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/1041/2020**  
**DATE: : MONDAY 1<sup>ST</sup> FEBRUARY, 2021**

**BETWEEN:**

**FEDERAL REPUBLIC OF NIGERIA } COMPLAINANT  
/RESPONDENT**

**AND**

**IBRAHIM OLANREWAJU MAHMUD } DEFENDANT  
/APPLICANT**

## **RULING**

The Applicant approached this Honourable Court vide a Motion On Notice praying the Court for an Order admitting him to bail on very liberal terms pending the hearing and determination of the substantive case.

In support of the application, is 10 paragraphs affidavit duly deposed to by one M.C Ifeajekwu a legal practitioner in the law firm of the Applicant.

It is the deposition of the Applicant that he was arrested by the operative of the Respondent sometime in September, 2020 for the offences of obtaining money by false pretences contrary to section 8(b) of the Advance free fraud and other related offences Act, 2006, forgery contrary to section 362 of the penal Code Act, 1990, using as

genuine, a forged document contrary to section 366 of the Penal Code, and being in possession of false document contrary to sections 6 and 8(b) of the advance fee fraud and other related offences Act, 2006.

That the Applicant has been in detention beyond constitutional period of 48 hours even though investigations have been completed. And That the offence charged are bailable offence.

Applicant avers further that if granted bail he will not jump bail and shall provide reasonable surety.

A written address was filed wherein the issue “whether this Honourable Court has powers to admit the Applicant to bail in the circumstance of this case is formulated for determination.”

Arguing on the above issue, learned counsel submit that section 158 of the Administration of Criminal Justice Act, 2015 provides that the offences are bailable and therefore, the Defendant ought to enjoy his bail pending determination of this case. ***OBEKPA VS C.O.P (1980) 1 NCLR 133.***

It is further the submission of learned counsel that bail is at the discretion of the court and the court is most likely to grant bail unless it shows that the Applicant attempt to evade his trial, attempt to conceal or destroy evidence or any act that will pervert justice. ***LAWAL VS FRN (2013) ALL FWLR (Pt. 671) 1545.***

Court was finally urged to grant this application in the interest of justice.

Upon service, the complainant filed a counter affidavit of 14 paragraphs deposed to by Samson Oloje, a litigation officer in the Respondent's office.

It is the deposition of the Respondent that the Applicant was detained because of two separate petitions vide Exhibit "EFCC1A" and "B" herein attached.

That the offences with which the Applicant is standing trial in the instant charge are ordinary not bailable, as it attract punishment of not less than 7 years but may extend to 20 years on counts 1 and up to 14 years on counts 2-6.

It is further the counter affidavit of the respondent that there is very likelihood that the Applicant will jump bail and or commit any offence again.

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

Written address was filed wherein the issue “whether the Defendant Applicant has placed sufficient materials before this Honourable Court upon which the court can exercise its discretion in his favour.”

Arguing on the above, learned counsel submit that the law which governs the grant or refusal of an application of this nature is section 158 and 162 of the Administration of Criminal Justice Act 2015 and it does not impose upon the court an obligation to grant bail but situates the determination as to the grant of bail within the discretionary powers of the court.

Counsel contended that the issue of presumption of innocence of the Applicant is premature and has no bearing in this application. *NWUDE VS FRN (2005) 1 NCC 213.*

It is further the submission of counsel that in *BAMAIYI VS STATE (2001) 8 NWLR (Pt. 715) 270 at 291*, the factors relevant in the exercises of the court's discretion to grant or refuse bail were listed to includes.

- i. Evidence available against the accused person.
- ii. Availability of the accused to stand trial.
- iii. The nature and gravity of the offence etc.

Court was finally urged to refuse the application in the interest of justice.

**Court**:-I have gone through the application under consideration which seeks the court's discretion in granting the Accused/Applicant bail pending the determination of the substantive case.

I must state here that by virtue of section 35(4) and 36(5) of the 1999 Constitution of Federal Republic of Nigeria as amended, an accused person is entitled to his unfettered liberty and is presumed innocent until proven guilty. The onus however is on the prosecution to prove that a Defendant charged before a court of law is not entitled to be granted Bail.

The presumption of innocence and the right to liberty as enshrined in section 36 (5) and 35 (4) respectively of the constitution can only be invoked where there is no prima facie evidence against the



accused. It would be foolhardy to allow the accused on bail because the constitution could not have envisaged a situation where accused person of every shade could be allowed bail just at the mention of the magic words of presumption of innocence.

***ALAYA VS STATE (2007) 16 NWLR (Pt. 1061) 483 at 505 paragraph D – F.***

The main function of bail is to ensure the presence of the accused at the trial. So if there is any reason to believe that the accused is likely to jump bail, the bail will properly be refused by the court in exercise of its discretion in dealing with the application.

***SULEMAN VS COP (2008) 8 NWLR (Pt. 1089) 298.***

The offence Defendant is charged with is a non-capital defence. The provision of the law makes it

clear that bail is not automatic. The court may release an Accused/Applicant on bail upon some conditions stipulated under the law and some that have received judicial pronouncements. Thus in considering whether to grant or refuse bail to an accused person, the court is guided by the following factors:-

- i. Nature of the charge
- ii. The severity of the punishment in the event of conviction.
- iii. The strength of the evidence by which the charge is supported.
- iv. The criminal record of the accused, if any.
- v. The likelihood of the repetition of the offence.

- vi. The probability that the accused may not surrender himself for trial, thus not bringing himself to justice.
- vii. The risk that if released, the accused may interfere with witness or suppress the evidence likely to incriminate him and
- viii. The necessity to procure medical treatment of social report. ***OHIZE VS C O P (2014) LPELR 23012 (CA).***

From the averment contained in paragraph 2, 3, 4, 5, and 6 of the deposition of affidavit in support of the application for bail, it is obvious that the accused person is willing to face trial and will not jump bail if same is granted to him.

As stated in the preceeding part of this ruling, attendance of court to face trial remain the reason and only reason courts usually refuse Bail.

Once an accused person's presence in court can be secured, court usually would not be hesitant in granting bail.

Above underscores the fact that bail is contractual in nature between the court and the accused person.

Even though the prosecution has exhibited evidence that there are other cases against the accused person. Nevertheless I shall exercise my discretion in favour of the accused person on terms.

Accordingly, bail is hereby granted Applicant on the following terms and conditions:-

1. Defendant shall produce two sureties who must be residents of the FCT, Abuja.
2. Sureties shall show evidence of domicility in Abuja by providing title documents of their houses which shall be within the capital cities i.e Wuse 2, Garki, Asokoro or Maitama.
3. Defendant shall deposit his travel documents with the registrar of this court.
4. Sureties shall provide written undertaking to produce Defendant always in court until final determination of this matter.
5. Sureties shall forfeit their property and title documents if Defendant jumps bail?

*Justice Y. Halilu*  
*Hon. Judge*  
*1<sup>st</sup> February, 2021*

## **APPEARANCE**

Defendant in Court.

Benjamin Manji – for the Prosecution.

C.E Emmanuel, I hold the brief of Ogboi – for the Defendant.