IN THE HIGH COURT OF JUSTICE OF THE F.C.T.
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT APO, ABUJA
ON WEDNESDAY, THE 19TH DAY OF JANUARY, 2022
BEFORE HIS LORDSHIP: HON. JUSTICE ABUBAKAR HUSSAINI MUSA
JUDGE

CHARGE NO: FCT/HC/CR/472/2021
MOTION NO.: M/7897/2021

BETWEEN:

COMMISSIONER OF POLICE **COMPLAINANT/RESPONDENT**

AND

ISHOLA ADELEKE **DEFENDANT/APPLICANT**

RULING

This ruling is in respect of an application for bail brought by the Defendant/Applicant.

The Defendant/Applicant is standing trial in this Honorable Court on a three-count charge bordering on theft by servant, contrary to the provisions of section 289 of the Penal Code Act Laws of the Federal Capital Territory and criminal breach of trust contrary to the provisions of section 312 of the Penal Code Act Laws of the Federal Capital Territory.

On the 16th day of November, 2021 after the arraignment of the Defendant/Applicant, and his plea of not guilty, Counsel for the Defendant/Applicant informed the Court that a bail application had been filed on behalf of the Defendant/Applicant. The application with motion number M/7897/2021, prayed thisHonorable Court for the following reliefs:

1) *An Order of this Honourable Court admitting the defendant/applicant to bail pending trial of this matter on very lenient conditions*
2) *And for such further or other orders as this Honorable Court may deem fit to make in the circumstance of the case.*

In support of the application was a 13-paragraph affidavit deposed to by one Rita Nmarkwe, a legal practitioner in the law firm representing the Defendant/Applicant and a written address dated and filed on the 12th day of November 2021.

The pertinent facts contained in the affidavit are as follows:

That the Defendant/Applicant had never been convicted of any criminal offence before. Also,that, the 1999 Constitution of the Federal Republic of Nigeria presumed the accused person innocent until the contrary is proved. That the Defendant/Applicant was arraigned on a similar charge before an Honorable Magistrate sitting in Karu division; and that the Prosecutor withdrew the charge in line with the provisions of section 108 of the Administration of Criminal Justice Act 2015. Thesaid ruling of the Magistrate Court was attached as **Exhibit A**.

It was further averred on behalf of the Defendant/Applicant that he was granted bail before the charge was withdrawn. The deponent added that the investigation had since been concluded by the FCT Police Command. Consequently, it was not feasible or practicable for the

Defendant/Applicant to interfere with the course of justice; that the Defendant/Applicant would not jump bail if this application was granted. And, finally, that the Defendant/Applicant was ready and willing to provide sureties to ensure that he was present in Court anytime he was required to do so.

In the written address, Learned Counsel for the Defendant/Applicant formulated a sole issue for this Honorable Court to determine: "*Whether in the circumstance of this case this Honorable Court is not entitled to exercise his discretion in favour of the Defendant/Applicant?"* In his submission on this sole issue, Learned Counsel for the Defendant/Applicant submitted that the offence of this nature is bailable and that the Court has the discretionary power to either grant or refuse the bail application. He further submitted that this discretionary power of Court to grant bail lends its credence to section 118(2) of the Criminal Procedure Act, CAP 80, Laws of the Federation, 1990, which was *inparimateria* with the provisions of section 58 of the Administration of Criminal Justice Act 2015, whichgives discretion to the Court to grant or refuse bail in a case where the felonious offence is not punishable with death. Learned Counsel relied on the case of ***CHINEMELU v. COP (1995) 4 NWLR (Pt 390) 467 at 484 B-C*.**

Learned Counsel also submitted that the trite position of the law is that every person arrested in respect of any offence is entitled to bail. Counsel

cited section 58 of the Administration of Criminal Justice Act, 2015. Furthermore, Counsel submitted that bail is a constitutional matter which finds support inSections 35 and 36 of the 1999 Constitution of the Federal Republic of Nigeria. Also,Learned counsel for the Defendant/Applicant further submitted that the relevant guiding factors in granting bail is the certainty of evidence that the accused would in no way either tamper with investigation or commit further offence and, most important of all, that he would avail himself for trial and answer to the charge or charges against him.

He further stated that it is essential for theCourt to be of an objective frame of mind in the exercise of discretion in the consideration of bail applications. He relied on the case of ***Olayiwola v. FRN (2006) ALL FWLR (Pt 305) 667 at 690, paras D-G***. Counsel further submitted that it is a well settled law that one is deemed to be innocent in any criminal offence unless proven otherwise. He relied on the case of ***Enweremv. COP (1993) 6 NWLR (Pt 299) 33 at 34 – 35***.Counsel also cited and relied on section36(5) of the 1999 Constitution of the Federal Republic of Nigeria.

In his adumbration on the factors to consider in granting a bail application as enunciated in the case of ***Olayiwolav. FRN (Supra) P. 669***, Learned counsel finally submitted that the Defendant/Applicant promised to be available at all times to stand trial and would not do or cause to be done by him or any other person that which could obstruct the course of justice. He

referred the Court to paragraph 10 of the Defendant/Applicant's affidavit in support of the motion where it was stated that investigation had since been concluded by virtue of the earlier trial in the other Court and that it was notfeasible or practicable for the Defendant/Applicant to interferewith the course of justice.Counsel relied on the case of ***Bolakalev.State (2006) 1 NWLR (Pt 962) 507 at 518 C-D*.** He urged the Court to grant this application by admitting the Defendant/Applicant to bail on liberal terms.

The Counsel to the Complainant/Respondent did not file any process in opposition to the Defendant/Applicant's application for bail. However,Counsel applied to respond orally on points of law, but the Court overruled his application on the ground that the Court is a Court of record and all submissions ought to be formal. The Court, accordingly, adjourned the matter for Ruling. This ruling is therefore based on the unchallenged and uncontroverted facts in support of the Defendant/Applicant's application for bail.

The above is a summary of the facts and legal submissions of Counsel for the Defendant/Applicant in support of his application. Clearly what this Court is invited to determine is this issue:"***Whether the Defendant/Applicant is entitled to bail by this Court considering the circumstances of the case?***"

To address this issue, I must refer myself to the charge sheet and the offences for which the Defendant/Applicant is standing trial. As I have pointed out at the beginning of this Ruling, the Defendant/Applicant is standing trial on a three-count charge bordering on theft by servant and criminal breach of trust committed against a cooperative society. The offences are no doubt serious offences under the Penal Code which carry each a sentence of seven yearsimprisonment or fine or with both.

In ***Tarka v D.P.P (1961) All NLR 367 at 377***,the Court of Appeal, per Reed Ag S.P.J., held that though aperson accused of an offence punishable with imprisonment for a term exceeding three years shall not ordinarily be released on bail, the Court may, nonetheless, release such person if it is considered;

(a) That by reason of granting the bail the proper investigation will not be prejudiced nor a serious risk of the accused escaping from justice being occasioned or

(b)That there were no reasonable grounds believing that the accused was guilty of the offence, but that there were sufficient grounds for further inquiry; or

(c) That no grounds existed believing that the accused if released would commit an offence.

These conditions were also restated in the Administration ofCriminal Justice Act 2015, in sections 162 and 165 (1), (2), and (3).

A consideration of these conditions necessarily involve the exercise of discretion of the Court. I shall rely on the case of ***Chinemelu v. COP (Supra)***, which the Learned Counsel for the Defendant/Applicant cited, where the Court of Appeal per Adamu JCA held that "***the grant or otherwise of bail pending trial is based on the exercise of discretion by the Court before which an application is properly made*****".** As to how this discretion should be exercised, the Court of Appeal per Aka'ahs JCA held in ***Ogbhemhev. COP (2000) 19 W.R.N 46 at 50***that**"*****There is no gainsaying the fact that the granting of bail to an accused is a discretionary power of the Court before which such application is pending. The exercise of that discretion must be judicially and judiciously applied*****."**

To exercise its discretion judicially and judiciously, the Court must consider the facts of the case before it. These facts are extracted from the affidavit evidence before it in respect of the application for bail. See the case of***State v.Akaa (2002) 10 NWLR (Pt 774) 157 at 172-173*****.**

In view of the foregoing therefore I shall return to the affidavit evidence before me. The Defendant/applicant stated in his affidavit in support of his application that, he has never been convicted of any crime before, that he

will not jump bail if the application is granted, and that he is ready and willing to provide reasonable sureties to ensure that he is present in Court anytime he is required to do so.

I must also point out thatbail is a constitutional matter which is a component of an accused person's right to personal liberty.See section 35(4) of the 1999 Constitution of the Federal Republic of Nigeria. But, this is subject, of course, to the provisions of subsection (7) that excludes capital offences from the operation of subsection (4).

In***Dasuki v. Director-General, SSS (2020) 10 NWLR (PT 1731) 136 at 152 paras A-B*****,** the Court of Appeal held that "***Bail under the Nigerian law is not meant to be a mirage. By section 165 (1) of the Administration of Criminal JusticeAct, 2015, the conditions for bail in any case shall be at the discretion of the court with due regard to the circumstance of the case and shall not be excessive***."

Also, in the case of***Dokubo-Asari v. FRN (2007) 12 NWLR (Pt 1048) 320***, the Supreme Court per Muhammed JSC laid down the guidelines which the Court must consider in granting of bail. These guidelines include the following:

(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 is 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;

(h) Detention for the protection of the accused;

(i) The probability of guilt;

(j) The necessity to procure medical or social report pending final disposal of the case;

In this instant case, the Defendant/Applicant is standing trial for the offences of theft by servant and criminal breach of trust. Though punishable with a term of imprisonment exceeding three years, the offence is not a capital offence and so, is bailable pursuant to section 162 of the Administration of Criminal Justice Act,2015 and section 35(4) and (7) of the 1999 Constitution of the Federal Republic of Nigeria.Besides, the depositions of the deponent in support of the bail application and the exhibit attached disclose conformity with the conditions the Courts have been enjoined to consider in exercising their discretion in bail applications.

Having considered the provisions of section 165 of the Administration of Criminal Justice Act, 2015 which states that the conditions for bail in any case shall be at the discretion of the Court with due regard to the circumstance of the case, I also have to point out that in the case of

Dokobu-Asari v. FRN (supra) at pages 362-363, paras D-A, the Supreme Court held that **"*The main function of bail is to ensure the presence of the accused at the trial. Thiscriterion is regarded as not only the omnibus one but also the most important of all the criteria for granting bail at the trial court…*"**

In view of the foregoing therefore, I hereby admit the Defendant/Applicant to bail subject to the Defendant/Applicant fulfilling the following conditions:

(1) The Defendant/Applicant is hereby admitted to bail in the sum of ThreeMillion Naira (₦3,000,000.00) and one surety in like sum.

(2) The surety must be a civil servant not below Grade Level 12.

(3) The surety shall bring the original copies of their Letters of Appointment and Last Promotion for sighting.

(4) The Registrar of this Court shall verify the status of the surety, the residential address of the surety and confirm that he works at the office he claims.

This is the Ruling of this Court delivered today, the 19th day of January 2022.

HON. JUSTICE A.H. MUSA
JUDGE
19/01/2022