

THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT MATIAMA - ABUJA
ON 6TH DAY OF DECEMBER, 2021
BEFORE HIS LORDSHIP HON. JUSTICE CHIZOBA N. OJI
PRESIDING JUDGE
SUIT NO: FCT/CR/292/21
MOTION NO: M/228/21

BETWEEN:

INSPECTOR GENERAL OF POLICE COMPLAINANT/RESPONDENT

AND

- | | | |
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| <ol style="list-style-type: none">1. ESEOGHENE GODWIN "M"2. GODFREY AMOS OMAMULI "M"3. OBODO STEPHEN "M"4. NASIRU MUHAMMED "M"5. YUNUSA EGBUNU "M"6. AYEGBA CHAPI "M"7. SAMUEL ENEBI "M" | } | DEFENDANTS/APPLICANTS |
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RULING

This is a ruling on motion on notice No M/228/21 filed on 20th September 2021 seeking the bail of the Defendants/Applicants pending the hearing and determination of Charge No FCT/HC/CR/292/2021 before this Honourable court; and further orders as the Honourable court may deem fit to make in the circumstances.

The application is predicated on 12 grounds and supported by a 16 paragraph affidavit of Abdul Muhammed, biological brother to the 4th Defendant/Applicant and friend to the other Defendants.

Also filed was counsel's written address where the court was urged to admit the Applicants to bail in line with the constitutionally guaranteed presumption of innocence in favour of the Applicants.

See Section 36 (5) of the Constitution of the Federal Republic of Nigeria 1999 (as amended), **IBORI V V FRN (2009) 3 NWLR (Pt 1127) 97.**

Learned counsel equally submitted that the Applicants rely on the ground of illness to seek bail and have thus satisfied the provision of Section 161(2) (a) of the Administration of Criminal Justice Act (ACJA) 2015.

It was further submitted that the Complainant filed a charge of armed robbery against the Applicants out of malice whereas the facts of the case do not warrant a charge of armed robbery, but only support offences of housebreaking or theft for which a charge had been prepared against the Applicants only for the Complainant to do a somersault and file a charge of armed robbery.

The court was thus urged to admit the Applicants to bail on liberal terms. See Section 165 (1) Administration of Criminal Justice Act 2015.

Authorities were cited in support of these submissions.

In opposing the application, the Prosecution on 11th October 2021 filed a 25 paragraph affidavit of Inspector Joshua Yohanna, a Litigation Police Officer in the legal section of the Complainant, of Force Headquarters Abuja, and a written address wherein it was argued inter alia; that the Applicants have not established any exceptional circumstances required in Section 161 (1) & (2) Administration of Criminal Justice Act 2015 to warrant a grant of this application.

That there is nothing before the court to show that the Applicants are ill and that the correctional facility cannot meet their medical needs. See **ABACHA V THE STATE (2002) 4 MSSC 1 AT PAGE 3.**

It was submitted that it was very unusual for a person standing trial for an offence carrying capital punishment to be on bail. See **MUSA V C.O.P (2004) 9 NWLR (PART 879) 483 @ 489 RATIO 3.**

In considering the application for bail he urged the court to consider the criteria enunciated by the Supreme Court in **BAMAIYI V THE STATE (2001) 8 NWLR (PART 715) PG 270 AT 274 RATIO 2.**

He urged that the Applicants have not shown there will be undue delay in the trial or any other exceptional circumstances to warrant the exercise of the court's discretion in their favour. The court was thus urged to dismiss the application.

I have considered the application, the affidavits and arguments both sides.

The Applicants are standing trial before this court for offences including criminal conspiracy and armed robbery punishable under Sections 6 (b) and 1 (2) of the Robbery & Fire Arms (Special Provisions) Act Cap, R11 LFN 2004 respectively, punishable with capital punishment.

Section 161 (1) of Administration of Criminal Justice Act 2015 provides that:-

“A suspect arrested, detained or charged with an offence punishable with death shall only be admitted to bail by a judge of the High Court, under exceptional circumstances.”

Section 161 (2) provides:-

“For the purpose of exercise of the discretion in subsection (1) of this section ‘exceptional circumstance’ includes:-

(a) ill health of the applicant which shall be confirmed and certified by a qualified medical practitioner employed in a Government hospital provided that the suspect is able to prove that there are no medical facilities to take care of his illness by the authority detaining him;

(b) extra ordinary delay in the investigation, arraignment and prosecution for a period exceeding one year; or

(c) any other circumstances the judge may in the particular facts of the case consider exceptional.”

The reason for the application for bail is on the ground of ill health.

The onus is on the Applicants to prove the existence of exceptional circumstance, in this case, to convince the court of their ill health. There is nothing before this court to show that the Applicants are ill and that the correctional facility is unable to take care of their illnesses.

Even the nature of the illness is not mentioned.

The court does not act on sentiments but on hard facts placed before it.

The Applicants were arraigned in court within a year of their arrest. So there has not been extraordinary delay in prosecuting them.

I have also read through the case file and I do not find anything disclosed to enable this court exercise its discretion in favour of the Applicants.

The application for bail is therefore dismissed.

The Applicants are to remain in custody at Kuje Correctional Services pending the hearing and determination of their case before this court.

Hon Judge