

IN THE HIGH COURT OF JUSTICE
FEDERAL CAPITAL TERRITORY OF NIGERIA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT APO – ABUJA
ON 1ST DAY OF DECEMBER, 2021.
BEFORE HIS LORDSHIP:- HON. JUSTICE A. O. OTALUKA.

CHARGE NO.:-FCT/HC/CR/88/2019
MOTION NO.:-FCT/HC/M/8154/2021

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA:..COMPLAINANT/RESPONDENT

AND

PETER ODANG ENYIGWE:.....DEFENDANT/APPLICANT

KadijatAbdulsalamYunus holding the brief of M.I. Buba for the Prosecution.
ImhanbeOsagie for the Defendant.

RULING.

The Defendant/Applicant by Motion on Notice dated and filed the 19th day of November, 2021, brought this application seeking the following reliefs:

1. An order of the honourable Court vacating the order of bench warrant issued against the Defendant by the honourable Court on 20th October, 2021.
2. And such order(s) as the honourable Court may deem fit to make in the circumstance of this case.

In the supporting affidavit to the application, the Defendant/Applicant averred that since his arraignment before this Court, he has never absented himself from trial. That after the trial on 16th February, 2021, the case was further adjourned to 15th April, 2021 for continuation of hearing, but that he came

to Court on the said 15th April, 2021, only to be informed that the Court could not sit as a result of the JUSUN strike.

He averred that the Prosecution later came secretly and surreptitiously to pick a hearing date of 20th October, 2021 without notifying him and his lawyer of the new date. That his lawyer only informed him by phone that one of the prosecuting counsel – Femi Makinde, Esq, called him by 10.00am or thereabout to tell him that his matter was fixed for hearing that day, but that his lawyer informed the said prosecuting counsel that he was on his way to Lafia for another matter, as he had no prior knowledge that the case was fixed for that date.

He stated that strangely on the same date, even though they had no hearing notice, nor prior information about that, the prosecuting counsel misled the Court and procured a bench warrant for his arrest without justification.

The learned Defendant's/Applicant's counsel, ImhanbeOsagie, Esq, in his written submission in support of the application, raised a sole issue for determination, namely;

“Whether in the circumstances of this case, the Applicant is entitled to the relief herein sought?”

Proffering arguments on the issue so raised, learned counsel contended that when a criminal matter is fixed for specific date and the matter did not go on because of a supervening occurrence, the party picking a date ought to notify the adverse party against the next adjourned date to cloak the Court with jurisdiction. He argued to the effect that in such a situation, service of hearing notice becomes a sine qua non. He referred inter alia to **Madueke v. Madueke (2012)4 NWLR (Pt.1289)97; Folorunsho v. Shaloub (1994)3 NWLR (Pt.333) 413 at 430.**

Relying on **Federal Mortgage Bank of Nigeria Ltd v. C.E. Adu (2000)11 NWLR (Pt.678)318-319**, he submitted that a breach of the right to fair hearing renders the proceeding null and void.

He urged the Court on the basis of the foregoing, to set aside the order of bench warrant issued against the Defendant/Applicant.

In opposition to the application, the prosecution filed a 6 paragraphs counter affidavit deposed to by EzireUfoma Alex, a Litigation Secretary in the Legal and Prosecution Department of the Economic and Financial Crimes Commission (EFCC).

He averred that after the defence counsel cross examined the DW1 on 16th February, 2021, the matter was adjourned to 15th April, 2021 for continuation of hearing. That on the said 15th April, 2021, the Court Could not sit on account of the JUSUN strike, and continuation of trial was then adjourned to 20th October, 2021, while hearing notice was served on all the parties.

He stated that on the said 20th October, 2021, both the Defendant and his counsel were absent in Court, and before the Court session, the prosecuting counsel reached out to the defence counsel on phone to enquire about his noticed absence, whereupon the defence counsel informed MakindeOlufemi Felix, Esq, the prosecuting counsel, that he was presently in Lafia and had no knowledge of the adjourned date.

He averred that, guided by the record of Court, the prosecuting counsel, MakindeOlufemi Felix, Esq, moved orally for the revocation of the Defendant's bail, following which the Court issued a bench warrant for the Defendant's arrest. It was

further averred by the Prosecution that the Economic and Financial Crimes Commission (EFCC) operatives could not execute the order of bench warrant issued for the arrest of the Defendant as the address was not his extant address, and his contact phone numbers are also not functional. He stated that attempt was also made to reach the Defendant's surety who took him on bail after arraignment, but it turned out that the surety's address and employment record were all fictitious.

The prosecution averred that the Defendant is a proven flight risk having abused the earlier bail granted him by this Court.

In his written address in support of the counter affidavit, learned prosecuting counsel, M.A. Attah, Esq, raised a sole issue for determination, namely;

“Whether from the facts and circumstances of this case as presently constituted, it could be said that the Defendant/Applicant has placed sufficient materials before this honourable Court upon which this court can exercise its discretion in his favour?”

Arguing the issue so raised, learned counsel relied on **Desmond Nwodo v. The State (2021) LPELR-54492(CA)** to submit to the effect that the absence of a defendant in Court for his trial may be a fair reason to revoke his bail and issue a bench warrant for his arrest.

He referred to **Akano v. FRN (2016) 10 NWLR (Pt.15119)17** on the factors which the Court will consider in exercising its discretion one way or the other when considering bail application.

He relied on **Bamaiyi v. State (2005)4 QCCR 184** to posit that an applicant for bail must place sufficient material before the

Court to convince the Court that he deserves the exercise of the discretion in his favour.

Learned counsel argued that from the depositions in the Respondent's counter affidavit, the Defendant/Applicant cannot be trusted with bail. That the Defendant is not only a potential flight risk, but a proven flight risk, having abused the earlier bail granted him by this Court.

He further argued that the Defendant/Applicant in the affidavit in support of this application, has also not promised to make himself available for trial.

He referred to **Ofulue v. FGN (2005) 3 NWLR (Pt.913)571 at 597**, and urged the Court to dismiss this application as same is baseless, vexatious and lacking in merit. He however urged that if the Court is minded to grant the application, that stringent conditions be imposed to ensure the Defendant's appearance throughout the duration of his trial.

The learned defence counsel, with the leave of Court, replied on points of law to the counter affidavit.

He placed reliance on Section 122 (2)(m) of the Constitution to urge the Court to rely on its records to determine whether there was any hearing notice served.

He submitted that by Section 242(6) of the Administration of Criminal Justice Act, 2015, the only way proof of service can be established is through process server.

He urged the Court, against the backdrop of the foregoing, to discountenance the counter affidavit.

Upon considering the Applicant's application and the counter affidavit by the Respondent; this Court for the interest of justice, exercises its discretion in favour of the Applicant.

Accordingly, this application is granted and the Court makes an order vacating the order of bench warrant issued against the Defendant by this Court on the 20th of October, 2021.

Court orders the Defendant to continue enjoying the subsisting bail conditions as hitherto made by this Court.

HON. JUSTICE A. O. OTALUKA
1/12/2021.