

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

**BEFORE HIS LORDSHIP: HON. JUSTICE .H. MU’AZU
CHARGE NO. FCT/HC/CR/496/2021
MOTION NO. FCT/HC/M/8837/2021
ON THE 17TH DECEMBER, 2021**

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA - COMPLAINANT/RESPONDENT

AND

- | | | |
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| <ol style="list-style-type: none"> 1. ALHAJI KABIRU HARUNA 2. ORIO BUSINESS CONNECT LIMITED | } | DEFENDANTS/APPLICANTS |
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Appearance:

Max Ogar, Esq. with Ikechukwu Odanwo Esq. for the 1st Defendant/Applicant.

RULING

By a Motion on notice brought pursuant to sections 35(1) & 36(5) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and sections 158 and 162 of the Administration of Criminal Justice Act, 2015, the Applicant seeks for the following:

1. An Order admitting the 1st Defendant/Applicant to Bail pending the hearing and determination of the charge before this Honourable Court.

2. Omnibus prayer.

The application is supported with a 17 paragraph affidavit deposed to by the Applicant himself. Also in compliance with the Rules of this Court, the Applicant Counsel filed a Written Address.

The Respondent did not file a Counter affidavit to this application even though served on the 9/12/2021, but object to the grant of this application orally.

The fact distilled from the affidavit in support of the application is that, the 1st Applicant is the Chairman/CEO of the 2nd Defendant which is a Real Estate Development Company duly Registered with the CAC. The Complainant filed the charges against him and the 2nd Defendant in this matter. That he voluntarily and willingly honoured their invitation and volunteered his statement.

That he is currently on administrative bail granted to him by the complainant. That his attention was drawn to the pendency of this charge only on the 6/12/2021. That as a Law abiding citizen, he immediately instructed his Lawyer to liaise with the prosecuting Counsel to negotiate for an earlier date. That, an appeal was then made to the Court for an earlier date.

Further, he averred that, his real Estate Development business has been in dare straits leading to several complaints, petition and

charges being filed in the FCT High Court and he was granted Bail in all the cases and he has never been absent from Court for any reason.

That the offences for which the charge was brought against him is bailable. He has no past criminal records. He is ready to produce a dependable and reliable person to secure him bail in this Court. That he had an underlying health issues such as asthma and diabetes for over a decade now. Granting this application will not prejudice the Complainant/Respondent herein. It will be in the interest of justice to grant this application.

In his written address, Learned Counsel for the Applicant formulates two issues for determination i.e.: -

- 1. Whether this Court has the power to grant the Applicant bail pending the hearing and determination of the charge against him?***
- 2. Whether the Applicant has placed enough materials before the Court to warrant the exercise of the Court discretion in his favour?***

In answering the above questions in affirmative, the Learned Counsel urge the Court to admit the Applicant to bail on conditions and terms that will be fair, friendly, fulfillable and judicious. For this, he relied on the authority in *OBIOMA V. FEDERAL REPUBLIC OF NIGERIA* (2005) 13

WRN 131 AT 144 where it was held that, it is against the spirit of the Law to impose excessive conditions for bail.

In opposition to the application for bail, the Learned Complainant/Respondents' Counsel as stated before, did not file a Counter affidavit, but rather made an oral submission in opposition to the bail application. He submit that, his opposition to the bail application is because the Defendant is standing trial for an offence carrying up to 7 years imprisonment upon conviction. He then urged the Court to refuse the application.

In the Applicant further affidavit, it was averred that, the reason why the Respondent granted bail to the Applicant was because it is certain that, the Defendant/Applicant will be available whenever needed. That the Defendant applied to this Court for abridgment of time for his arraignment from 14/12/2021 to 8th or 9th of December, 2021.

I have carefully read and considered the Motion paper and the supporting affidavit and the further affidavit of the Applicant on one hand, and the oral submissions of the Respondent in opposition to the bail application on the other hand. I have also considered the arguments canvassed by Counsel on both sides.

It is trite that, grant of bail is at the discretion of the Court. Also, where a maximum punishment on conviction of the Defendant exceeds three

years (as in this case), he may be released on bail except where there is reasonable ground to believe that, the Defendant will, where released on bail, commit another offence or evade his trial or interfere in the investigation or intimidate witnesses or destroy Evidence or prejudice proper investigation of the offence. See section 162 of ACJA. Here, although the Respondent has orally opposed the grant of the application, he did not in doing so, placed before the Court, sufficient Evidence, showing that, the Defendant can and will do any of the above infractions.

It is also true and pertinent that, the Defendant is presumed innocent by virtue of the provision of section 36 (5) of the 1999 Constitution (as amended).

That being said, the likelihood of the Defendant becoming available for his trial is also important consideration in the grant of bail. In this case, even though the Complainant/Respondent applies and the Court issued a bench warrant for the arrest of the Applicant for not being in Court on the 9/11/2021 and 22/11/2021, there is no any proof to show that the Defendant was arrested and brought to Court for his arraignment. Also, the averment in paragraph (9) of the affidavit in support which said that, ***“my attention was drawn to the pendency of this charge only on 6/12/2021”*** was never denied or challenged by the

Respondent. In addition, there is no any Evidence placed before this Court showing that, the Defendant has ever jumped the administrative bail granted to the Applicant by the Respondent. These to my mind are good enough to give him the benefit of doubt regarding his absence on the 9/11/2021 and 22/11/2021.

In the light of the forgoing and placing reliance on section 158, 159 and 163 of the ACJA and consistent with the provision of section 36(5) of the 1999 Constitution (as amended), the Court will exercise its discretion to grant the application while ensuring the attendance of the Applicant in his trial.

Accordingly, the application succeeds and it is hereby granted on the following terms: -

- 1. The Defendant/Applicant is hereby admitted to bail in the sum of N10, 000, 000. 00 and two sureties in the like sum.***

One of the sureties must be holder of title to property within AMAC. Such title to be verified by the Registry of this Court and title documents deposited with the registry of this Court.

Signed
Hon. Judge.
17/12/2021.