

IN THE HIGH COURT OF JUSTICE OF THE F.C.T.
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT APO, ABUJA
ON THURSDAY, THE 04TH DAY OF NOVEMBER, 2021
BEFORE HIS LORDSHIP: HON. JUSTICE ABUBAKAR HUSSAINI MUSA
JUDGE

CHARGE NO: FCT/HC/CR/182/2021
MOTION NO.: M/7126/2021

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA

COMPLAINANT/RESPONDENT

AND

- 1. ARC. NONYE IKEGWOHA**
- 2. HABITAT IV LIMITED**

DEFENDANT/APPLICANT
DEFENDANT

RULING

This Ruling is in respect of an application for bail brought by the 1st Defendant.

The Defendants are standing trial for the offences of obtaining money from one Olajide Lawrence by false pretence contrary to the provisions of section 1(1)(b) of the Advanced Fee Fraud and Other Fraud Related Offences Act, 2006, forgery of certain documents contrary to the provision of 363 of the Penal Code CAP 532 Laws of the Federation of Nigeria (Abuja) 1990 and using forged documents as genuine documents contrary to the provisions of 366 of the Penal Code CAP 532 Laws of the Federation of Nigeria (Abuja) 1990. The 1st Defendant/Applicant is the Managing Director and alter ego of the 2nd Defendant.

The 1st Defendant/Applicant was arraigned before this Honourable Court on the 26th day of October, 2021 on a 3-count charge bordering on the above-mentioned offences. Upon his arraignment, the 1st Defendant/Applicant, after confirming that he understood the charge read to him, pleaded not guilty to the offences contained in the charge. The matter was thereafter adjourned to the 2nd of November, 2021.

On the 02nd of November, 2021, learned Counsel for the Defendants moved the application for the bail of the 1st Defendant/Applicant. The application, with Motion Number M/7126/2021, was dated the 21st of October, 2021 and filed on the 22nd of October, 2021. It prayed this Court for the following specific relief: *“An order of the Honourable Court admitting the 1st Defendant/Applicant to bail unconditionally or upon such liberal terms pending the trial of the Applicant before the Honourable Court.”* The application was supported by an affidavit disclosing the facts upon which the 1st Defendant/Applicant relied for the bail application and a written address encapsulating the legal arguments in support of the application.

The facts as disclosed in the affidavit which was deposed to by one Ativie J. Omozokpea, the litigation secretary in the law firm of Lion of Judah, Counsel for the Defendants are this: that the 1st Defendant/Applicant was arrested by the operatives of the Economic and Financial Crimes Commission and since then had been detained at the facility of the Commission despite his plea for

administrative bail. He further averred that the 1st Defendant/Applicant was served with the charge at the trial and upon an examination of the charge sheet, he believed the Complainant had not disclosed a *prima facie* case against the 1st Defendant/Applicant. He revealed that the 1st Defendant/Applicant was the breadwinner of his family, and a responsible and respectable Nigerian citizen. While affirming that the 1st Defendant/Applicant would not interfere with further investigation, commit any other offence or jeopardise the justice of the case, he assured that the 1st Defendant/Applicant would meet the conditions of his bail and attend Court till the determination of the case.

In the written address, learned Counsel for the Defendants formulated this issue for this Court to determine: “*Whether the 1st Applicant has made out a case entitling him to bail?*”

Arguing this sole issue, learned Counsel prefaced his submission by restating that the purpose of bail was to temporarily release the person charged with an offence until they were proven guilty of the offence. Though he conceded that bail was at the discretion of the court, he urged the Court to exercise the discretion judiciously and judicially. This is particularly so, learned Counsel further contended, as the Constitution of the Federal Republic of Nigeria, 1999 had guaranteed the right to personal liberty of every person. Counsel pointed out that the offences for which the Defendants were standing trial

were bailable. While insisting that the Prosecution had a duty to produce evidence that could disentitle the 1st Defendant/Applicant to bail, he urged the Court to exercise its discretion in favour of the 1st Defendant/Applicant and admit him to bail.

For all his submissions, learned Counsel relied on the following cases: ***Shagari v. COP (2007) 5 NWLR (Pt. 1027) at 281; Ahmed v. COP (2012) 9 NWLR (Pt. 1304) 104 at 125 – 126, paras G – B; Dogo v. COP (1980) 1 NCR 14; Eyu v. State (1988) 2 NWLR (Pt. 78) 602; Suleiman v. COP, Plateau State (2008) 8 NWLR (Pt. 1089) 298 at 322 – 323, paras G – B.*** He also cited the following constitutional and statutory authorities: sections 35 and 36(5) of the Constitution of the Federal Republic of Nigeria, 1999; and sections 162 and 163 of the Administration of Criminal Justice Act, 2015.

Responding to the application for the bail of the 1st Defendant/Applicant, the Prosecution filed a counter-affidavit on the 28th of October, 2021. The counter-affidavit, which was deposed to by one Ufuoma Ezire, a staff of the Economic and Financial Crimes Commission, disclosed that the 1st Defendant/Applicant was accused of obtaining ₦100,000,000.00 (One Hundred Million Naira) only from one Olajide Lawrence and, upon making a written statement in the office of the Commission, was granted administrative bail on the 10th of April, 2018. He stated that the 1st Defendant/Applicant immediately absconded and was only re-arrested on the 18th of October,

2021. Because of this fact, he insisted that the 1st Defendant/Applicant was a flight risk and should not be admitted to bail. He added that the facts deposed to in the affidavit in support of the application were misleading and should not be relied upon by the Court. In support of the counter-affidavit, the Complainant/Respondent attached four exhibits, namely: the complaint of Olajide Lawrence written by his solicitors, Ibrahim Jibril & Co, to the Economic and Financial Crimes Commission, the statement of the 1st Defendant/Applicant which he made at the Commission, the conditions for bail granted the 1st Defendant/Applicant by the Commission, and the charge sheet containing the offences with which the 1st Defendant/Applicant is charged all marked as **Exhibits 1, 2, 3, and 4** respectively.

In the written address, Counsel for the Complainant/Respondent formulated the following issue: “*Whether the Defendant/Applicant is entitled to be admitted to bail based on the circumstances of this case.*” In his submission, learned Counsel restated the principle of law that bail was a matter of judicial discretion which must be exercised with due regards to the facts of the case. He referred the court to the case of ***Ogbuawa v. FRN (2011) 12 NWLR (Pt. 1260) 100 CA*** where the Court of appeal restated the conditions which the court must consider in deciding whether or not to grant bail to a person standing trial before it. Citing the case of ***Ukatu v. Commissioner of Police (2001) 6 NWLR (Pt. 710) 765 at Ratio 5***, learned Counsel urged this Court to reject the application for bail.

The above were the arguments canvassed by the parties through their Counsel in Court. In determining this application, this Honourable Court hereby formulates the following issue, to wit: ***“Whether upon a consideration of the facts deposed to in the affidavit in support of the application for bail and the counter-affidavit in opposition, the 1st Defendant/Applicant is not entitled to the exercise of the discretion of this Honourable Court granting him bail?”***

I must state that bail is provided for under the Constitution by virtue of section 35(4). It is also implied in the presumption of innocence guaranteed under section 36(5) of the same Constitution. Furthermore, it is clearly stipulated in section 62(2) of the Police Act 2020 and is covered generally under sections 158 – 188 of the Administration of Criminal Justice Act, 2015.

Though provided for in the Constitution and in the statutes, bail is not granted as a matter of course. It is now a settled principle of law that the question of whether a Defendant standing trial was entitled to bail or not is a matter that is well within the discretion of the Court and the exercise of this discretion must be done judiciously and judicially with regards to the facts of each particular case which must be considered on its own peculiar merits.

To determine whether, indeed, the 1st Defendant/Applicant is entitled to bail under the circumstances envisaged in this case, I must look at the charge sheet and the facts disclosed in the affidavit in support of this application. As I

have earlier pointed out, the Defendants are being charged for the offences of obtaining by false pretence and forgery. Under the Advanced Fee Fraud and Other Fraud Related Offences Act 2006, the offence of obtaining by false pretence carries a sentence of a term of imprisonment extending to twenty years but not less than seven years. Under the Penal Code, the offence of forgery carries a term of imprisonment extending to fourteen years or with fine or with both fine and imprisonment. The same punishment is prescribed in the Penal Code for the offence of using a forged document as genuine. The three offences, though not ordinarily bailable, are, nonetheless bailable. This is where the Court is expected to exercise its discretion judiciously and judicially.

In ***Tarka v. D.P.P. (1961) All N.L.R. 367 at 377***, the Court, per Reed, Ag. S.P.J. held that though a person 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 considered (a) that by reason of the granting of bail the proper investigation of the offence would not be prejudiced nor a serious risk of the accused escaping from justice be occasioned; or (b) that there were not reasonable grounds for believing that the accused was guilty of the offence, but that there were sufficient grounds for further inquiry; or (c) that no grounds existed for believing that the accused if released would commit an offence.

The principles in this case have been given statutory flavor in the Administration of Criminal Justice Act, 2015 *vide* the provisions of sections 162 and 163 which provide that:

Section 162:

“A defendant charged with an offence punishable with imprisonment for a term exceeding three years shall, on application to the court, be released on bail except in any of the following circumstances:

(a) Where there is reasonable ground to believe that the defendant will, where released on bail, commit another offence;

(b) Attempt to evade his trial;

(c) Attempt to influence, interfere with, intimidate witnesses, and or interfere in the investigation of the case;

(d) Attempt to conceal or destroy evidence

(e) Prejudice the proper investigation of the offence; or

(f) Undermine or jeopardise the objectives or the purpose or the functioning of the criminal justice administration, including the bail system.”

Section 163:

“In any other circumstance other than those referred to in sections 161 and 162 of this Act, the defendant shall be entitled to bail, unless the court sees reasons to the contrary.”

In ***State v. Akaa (2002) 10 NWLR (Pt. 774) 157 at 172 – 173***, the Supreme Court per Mukhtar JSC (as he then was) held that the Court must consider the affidavit evidence in determining whether or not to admit an accused person to bail. In ***Dokubo-Asari v. FRN (2007) 12 NWLR (Pt. 1048) 320***, the Supreme Court per Muhammad JSC (as he then was) laid down the guidelines which the courts must consider in determining whether an applicant for bail is deserving of the Court’s grace in that regard. At **pages 343 – 344, paras B – A** of the law report, His Lordship laid down the guidelines to include the nature of the charge; the strength of the evidence which supports the charge; the gravity of the punishment in the event of conviction; the previous criminal record of the accused if any; the probability that the accused may not surrender himself for trial; the likelihood of the accused interfering with witnesses or may suppress any evidence that may incriminate him; the likelihood of further charge being brought against the accused; detention for the protection of the accused; the probability of guilt; the necessity to procure medical or social report pending final disposal of the case.

Having reviewed the affidavit evidence before me; and after a careful juxtaposition of the facts disclosed therein and the guidelines set out in ***Dokubo-Asari v. FRN (2007) supra*** and section 162 of the Administration of Criminal Justice Act, 2015, I find, and so hold, that the 1st Defendant/Applicant is entitled to the exercise of this Court's discretion in his favour. In ***Dasuki v. Director-General, S.S.S. (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 Justice Act, the conditions for bail in any case shall be at the discretion of the court with due regard to the circumstances of the case and shall not be excessive.***” In ***Dokubo-Asari v. FRN (2007), supra at pages 362 – 363, paras D - A***, the Supreme Court further held that “***The main function of bail is to ensure the presence of the accused at the trial. This criterion 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 1st Defendant/Applicant to bail subject to the 1st Defendant/Applicant fulfilling the following conditions:

1. The 1st Defendant/Applicant is hereby admitted to bail in the sum of **₦5,000,000.00 (Five Million Naira)** only and two sureties in like sum.

2. The sureties shall be reasonable and respectable persons resident within the jurisdiction of this Court and must have immovable property within the jurisdiction of this Court.
3. The sureties shall provide evidence of ownership of such immovable property with the photocopy for sighting and shall deposit same with the Registry of this Court. The immovable property shall be forfeited to the Government in the event of any default on the part of the Defendant and/or the sureties.
4. The sureties shall swear to an affidavit of means.
5. The 1st Defendant/Applicant and the sureties shall deposit their international passports with the Registrar of this Court.

This is the Ruling of this Court delivered today, the 04th day of November, 2021.

HON. JUSTICE A. H. MUSA
JUDGE
04/11/2021