IN THE HIGH COURT OF JUSTICE OF THE F.C.T.
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT APO, ABUJA
ON THURSDAY, THE 28TH DAY OF OCTOBER, 2021
BEFORE HIS LORDSHIP: HON. JUSTICE ABUBAKAR HUSSAINI MUSA
JUDGE

CHARGE NO: FCT/HC/CR/431/2021
MOTION NO.: M/6609/2021

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA **COMPLAINANT/RESPONDENT**

AND

ASUQUO LIFA SOFT **DEFENDANT/APPLICANT**

RULING

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

The Defendant is standing trial in this Honourable Court on a five-count charge bordering on obtaining money by false pretence contrary to the provisions of section 1(1)(a) of the Advanced Fee Fraud and Other Fraud Related Offences Act, 2006 and forgery contrary to the provisions of section 364 of the Penal Code Laws of the Laws of the Federal Capital Territory, Abuja.

On the 12th of October, 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. The application, with Motion Number FCT/HC/M/6609/2021, prayed this Honourable Court for a particular relief, namely, "*An order admitting the Defendant/Applicant to bail pending the hearing and determination of his trial in this case.*" There was also the omnibus prayer.

In support of the application, one Martins Joseph, a legal practitioner in the law firm representing the Defendant/Applicant, deposed to an affidavit which contained the facts the Defendant/Applicant hoped would ground his application for bail. A written address was also filed alongside and same embodied the legal submissions of Counsel for the Defendant/Applicant in support of the bail application.

In the affidavit, the deponent averred that the Defendant/Applicant was arrested by men of the Economic and Financial Crimes Commission in June, 2021 and since then, he had been in the custody of the Commission as all attempts to procure his release on administrative bail were unsuccessful. He urged the Court to grant the application as the Defendant/Applicant had no previous criminal record and he would not, among other things, jeopardise the investigation of the case or in any way destroy evidence relating to the case.

In the written address, learned Counsel for the Defendant formulated this issue for this Court to determine: "*Whether the Applicant is entitled to bail by*

this Court considering the circumstances of the case." In his submissions, learned Counsel submitted that section 36(5) of the Constitution of the Federal Republic of Nigeria operated in favour of the Defendant in any criminal proceedings by grounding the presumption of innocence. He itemized the conditions that the courts had been enjoined to considered in granting bail as enunciated in the case of ***Adams v. Attorney-General of the Federation (2006) 44 WRN 46 AT 73 – 74***. Emphasizing that the main function of bail was to procure the attendance of the Defendant to stand his trial, he urged the Court to exercise its discretion judiciously and judicially in favour of the Defendant/Applicant.

In support of these arguments on this sole issue, learned Counsel cited and relied on the following constitutional, statutory and judicial authorities: sections 35(4), 36(5), 36(6)(b) and 41 of the Constitution of the Federal Republic of Nigeria, 1999; sections 158, 162 and 165 of the Administration of Criminal Justice Act, 2015; ***Fasehun v. Attorney-General of the Federation (2006) 43 WRN 99 at 111; Adams v. Attorney-General of the Federation (2006) 44 WRN 46 at 73 – 74; Dokubo-Asari v. Federal Government of Nigeria (2007) 12 NWLR (Pt. 1048) 320 at 362; R. v. Jammal 16 NLR 54; State v. Okafor (1964) ENLR 96; R. v. Rose (1989) 18 Cox C.C. 717; R. v. Robinson (1854) 23 LJ QB 286; Ex Parte Milburn 34 US 704 (1835); US v. Ryder 110 US 729; Stack v. Boyle 342 US 1 (1951); Adeniyi v. F.R.N.***

(2012) 1 NWLR (Pt. 1281) 284 at 295 paras A – C; and M.K.O. Abiola v. Federal Republic of Nigeria (1995) 1 NWLR (Pt. 370) 155 at 181.

Responding to the Defendant/Applicant's application for bail, the Complainant/Respondent filed a 7-paragraph counter-affidavit deposed to by Ufuoma Ezire, a litigation officer in the office of the Complainant. After denying the averments in paragraphs 5, 6, 7, 8, 9 and 10 of the affidavit in support of the Defendant/Applicant's motion on notice, he swore that the Defendant/Applicant was granted bail and that the terms of the bail were varied on two different occasions; yet, the Defendant/Applicant was not able to fulfil the conditions set forth in the administrative bail. He further averred that the Defendant was not granted bail on self-recognizance because of the gravity of the offences charged. He added that it was the gravity of the offences that would provide an incentive for the Defendant to jump bail. In view of this, he urged the Court to refuse the bail application. The deponent exhibited a copy of the offer of provisional administrative bail and notice of conditions in support of his averments.

In the written address in support of the counter-affidavit, learned counsel for the Complainant formulated an issue for determination, to wit: "*Whether the Defendant/Applicant has placed sufficient materials before this Honourable Court upon which the Court can exercise its discretion in his favour*." In his submission on the issue, Counsel, after reviewing the submissions of the

Counsel for the Defendant/Applicant, contended that the discretion vested in the Court to grant bail did not impose an obligation on it to grant bail as a matter of course. After citing the position of the court in decided cases which he quoted in *extenso*, learned Counsel argued that considering the weight of evidence against the Defendant/Applicant, the gravity of the offence charged, and the fact that the offence was such that affected the security of the nation at large, learned Counsel urged the Court to refuse bail.

The above summarises the facts and the legal submissions for and against the application for bail. The issues formulated by the parties in this application are similar. I will therefore adopt the issue formulated by the Defendant/Applicant in his written address. The issue is: "***Whether the Applicant is entitled to bail by this Court considering the circumstances of this case***."

To address this issue, I must refer myself to the charge sheet and the offences for which the Defendant/Applicant is standing trial. Though a five-count charge, the offences are obtaining by false pretence and forgery committed against three persons. The offences, as the deponent of the Complainant's counter-affidavit averred, no doubt, are serious offences which carry a minimum sentence of seven years and a maximum sentence of fourteen years imprisonment.

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.

Though decided before the enactment of the Administration of Criminal Justice Act, 2015, these conditions were restated in the Administration of Criminal Justice Act*vide* the provisions of sections 162 and 163which 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."

A consideration of these conditions necessarily involves the exercise of discretion by the Court. In ***Chinemelu v. C.O.P. (1995) 4 NWLR (Pt. 390) 467 at 491***, 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 (as he then was) held in ***Ogbhemhe v. C.O.P. (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."

In order to exercise its discretion judicially and judiciously, the Court must consider the facts of the particular case before it. These facts are extracted from the affidavit evidence before it in respect of the application for bail. 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 view of the foregoing, therefore, I return to the affidavit evidence before me. The Defendant/Applicant stated in the affidavit in support of the application that he had been in the custody of the Complainant/Respondent since June, 2021. The Complainant/Respondent did not dispute this fact; it only explained that the Defendant/Applicant was unable to fulfil the conditions of the administrative bail granted him by the Complainant/Respondent.

Section 35(4) of the Constitution of the Federal Republic of Nigeria 1999 provides that

> ***"Any person who is arrested or detained in accordance with subsection (1) (c) of this section shall be brought before a court***

of law within a reasonable time, and if he is not tried within a period of –

(a) Two months from the date of his arrest or detention in the case of a person who is in custody or is not entitled to bail; or

(b) Three months from the date of his arrest or detention in the case of a person who has been released on bail; he shall (without prejudice to any further proceedings that may be brought against him) be released either unconditionally or upon such conditions as are reasonably necessary to ensure that he appears for trial at a later date."

From the foregoing constitutional provisions, it is immediately obvious that bail is a constitutional matter which is a component of an accused person's right to personal liberty; subject, of course, to the proviso in subsection (7) that excludes capital offences from the operation of subsection (4). See ***Atiku v. State (2002) 4 NWLR (Pt. 575) 265 at 276 – 277***.

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) 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, he said:

> ***"When it comes to the issue of whether to grant or refuse bail pending trial of an accused by the trial court, the law has set out some criteria which the trial court is to consider in the exercise of its judicial discretion to arrive at a decision. Such criteria include, among others, 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 if 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.***

These criteria are not exhaustive. Other factors not mentioned may be relevant to the determination of grant or refusal of bail to an accused. They provide the required guidelines to a trial court in the exercise of its discretion on matters of bail pending trial. Some of them may not be admissible as evidence in the main trial but they are certainly worthy to be taken into account in an application for bail pending trial."

In the instant case, the Defendant/Applicant is standing trial for the offences of obtaining by false pretence and forgery. Though punishable with a term of imprisonment exceeding three years, the offence is not a capital offence and, so, is bailable pursuant to the provisions of section 162 of the Administration of Criminal Justice Act, 2015 and section 35(4) and (7) of the Constitution.

Having considered the provisions of section 165 of the Administration of Criminal Justice Act, 2015 which unequivocally states that the conditions for bail in any case shall be at the discretion of the court with due regard to the circumstances of the case, I am minded to agree with the learned authors of the Halsbury Laws of England that "***The effect of granting bail is not to set the defendant free, but to release him from the custody of the law and to***

entrust him to the custody of his sureties, who are bound to produce him to appear at his trial at a specified time and place." See Halsbury's Laws of England (LexisNexis, fifth edition, 2010, volume 27) page 114 para 66. 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 Defendant/Applicant to bail subject to the Defendant/Applicant fulfilling the following conditions:

1.

This is the Ruling of this Court delivered today, the 28th day of October, 2021.

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HON. JUSTICE A. H. MUSA
JUDGE
28/10/2021