

IN THE HIGH COURT OF JUSTICE OF THE F.C.T.
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT APO, ABUJA
ON THURSDAY, THE 18TH DAY OF NOVEMBER, 2021
BEFORE HIS LORDSHIP: HON. JUSTICE ABUBAKAR HUSSAINI MUSA
JUDGE

CHARGE NO: FCT/HC/CR/378/2021
MOTION NO.: M/7129/2021

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA

COMPLAINANT/RESPONDENT

AND

- 1. GARBA ISIYAKU BATSARI**
- 2. ADAMS PAUL**
- 3. JUMMAI REBECCA JOHN**
- 4. MOHAMMED BADEGGI**

DEFENDANTS/APPLICANTS

RULING

This Ruling is in respect of an application for bail brought by the Defendants/Applicants.

The Defendant is standing trial in this Honourable Court on a nine-count charge bordering on criminal conspiracy and using office to confer corrupt advantage on self contrary to the provisions of section 96(1)(a) of the Penal Code, CAP 532, Laws of the Federal Capital Territory, 2006 and the Corrupt Practices and Other Related Offences Act, 2000 respectively.

On the 04th of November, 2021, the Prosecution arraigned the Defendants/Applicants before this Honourable Court. The

Defendants/Applicants pleaded not guilty to all the counts in the charge; whereupon, learned Counsel for the Defendants/Applicants applied for their bail. The application for bail which was made *vide* the motion on notice with Motion Number M/7129/2021 and brought pursuant to sections 158, 161(2)(c) of the Administration of Criminal Justice Act, 2015, sections 35 and 36 of the Constitution of the Federal Republic of Nigeria, 1999 as amended, Article 6 of the African Charter on Human and Peoples' Rights and under the inherent jurisdiction of this Honourable Court was dated and filed on the 25th of October, 2021. The Prosecution did not challenge the application for bail, but, rather left the application at the discretion of this Honourable Court. Specifically, the application prayed this Honourable Court "*For an Order of this Honourable Court admitting the Defendants/Applicants to bail pending the determination of the substantive charge against them.*" There was also the omnibus ground.

In support of the application, GarbalsiyakuBatsari, the 1st Defendant/Applicant deposed to the affidavit in support of the application on behalf of the other Defendants/Applicants. 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 deposed to facts which disclosed the grounds upon which the Defendants/Applicants hoped the Court would exercise in

their favourits discretion in respect of the bail application. According to the deponent, all the Defendants/Applicants had been on administration bail at the pleasure of the Independent Corrupt Practices and Other Related Offences Commission since March, 2021 and had never failed to report monthly as demanded. He averred that the Defendants/Applicants would always attend Court, be available for trial and would provide reliable sureties resident within the jurisdiction of this Honourable Court. He concluded that they had never been convicted of any offence by any Court

In the written address, the learned Counsel for the Defendants/Applicants, though he did not formulate any issue for determination, however submitted that the considerations to which the Court should address its mindwhile considering applications for bail included the likelihood of the applicant being available to stand their trial, the seriousness of the charge preferred against the accused, the strength of evidence against the applicant, the criminal records of the applicant and the likelihood of repetition of the offence. Learned Counsel proceeded to make legal submission on each of the conditions and concluded that the purpose of bail was to secure the attendance of the accused in Court, particularly, considering that the presumption of innocence guaranteed under section 36(5) of the Constitution of the Federal Republic of Nigeria inured in favour of the Defendants/Applicants in this case. He therefore urged this Honourable Court to admit the Defendants/Applicants to bail.

In support of all his submissions in this regard, learned Counsel relied on the cases of *Ani v. State (2002) 1 NWLR (Pt. 747) 217 at 232 – 233*; *Adamu Suleiman & Ors v. C.O.P. (2008) 5 SCM 200*; *Commissioner of Police v. Tobin (2009) All FWLR (pt. 483) 1302*; *Alhaji Felix Ikhazuagbe v. C.O.P. (2004) 7 NWLR (Pt. 872) 346*; *Emeka Onwughalu v. The State (2007) 46 WRN 191 at 199*; *Uwazurike v. Att.-Gen., Federation (2009) All FWLR (Pt. 489) 551*; and *Ngwu v. Onuigbo (1999) 13 NWLR (Pt. 636) 512*.

As I pointed out earlier, the Prosecution did not file any process in opposition to the Defendants/Applicants' application for bail, choosing, rather, to leave the grant or otherwise of the application at the discretion of the Court. To my mind, the issue is quite clear: ***“Whether the Defendants/Applicants are entitled to enjoy the exercise of this Court’s discretion in their favour by admitting them to bail.”***

The Defendants/Applicants in this case are standing trial for the offences of criminal conspiracy and using office to confer corrupt advantage on self. The punishment stipulated under section 19 of the Independent Corrupt Practices and Other Related Offences Act, 2000 for the substantive offence is five years without an option of fine. These offences, though not ordinarily bailable, are, nonetheless, bailable. Section 158 of the Administration of Criminal Justice Act, 2015 provides that ***“When a person who is suspected to have committed an offence or is accused of an offence is arrested or***

detained, or appears or is brought before a Court, he shall, subject to the provisions of this Part, be entitled to bail.”

Sections 162 and 163 of the same Act, however, leave the question of whether a Defendant standing trial for such an offence can be admitted to bail at the discretion of the Court. The Court, on the other hand, in exercising its discretion in this regard is enjoined to exercise same judiciously and judicially and with an eye on the circumstances of the case before it. The said sections 162 and 163 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.”**

Of course, in order to exercise its discretion judicially and judiciously, the Court must consider the facts of the particular case before it. These facts are not rocket science; they are facts obtainable from the affidavit. 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. I have considered the affidavit in support of this application and I am persuaded that the Defendants/Applicants have furnished sufficient material facts to entitle them to the exercise of this Court's discretion in their favour. For instance, the deponent swore that all the Defendants/Applicants had been on administrative bail since March, 2021 and had been reporting every month at the office of the Independent Corrupt Practices and Other Related Offences Commission since then until the date of their arraignment. This fact was not controverted by the Prosecution in any way.

In view of the foregoing, this Court believes that the circumstances of this case are such that the Defendants/Applicants should be admitted to bail. 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) 320at 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...”***

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, and all the authorities cited by learned Counsel for the Defendants/Applicants in support of his legal argument; and having given due regard to the authorities herein cited and the dictum herein quoted and all the circumstances of this present case, I hereby admit the Defendants/Applicants to bail subject to the Defendants/Applicants fulfilling the following conditions:

- 1. The Defendants/Applicants are hereby admitted to bail in the sum of ₦5,000,000.00 (Five Million Naira) only and two sureties for each Defendant/Applicant in like sum.**
- 2. The sureties shall be civil servants not below grade level 15 and must have immovable property within jurisdiction.**

3. The sureties shall provide evidence of their Letters of Appointment, Letters of Confirmation of Appointment and Letters of last promotion and shall bring the original copies for sighting.
4. The Registrar of this Court shall visit the stated offices of the sureties to confirm that they work thereat.
5. The Defendants/Applicants shall deposit their international passports with the Registrar of this Court.

This is the Ruling of this Court delivered today, the 18th day of November, 2021.

HON. JUSTICE A. H. MUSA
JUDGE
18/11/2021