IN THE HIGH COURT OF JUSTICE OF THE F.C.T.
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT APO, ABUJA
ON WEDNESDAY, THE 03RD DAY OF NOVEMBER, 2021
BEFORE HIS LORDSHIP: HON. JUSTICE ABUBAKAR HUSSAINI MUSA
JUDGE

CHARGE NO: FCT/HC/CR/428/2021
MOTION NO.: M/6977/2021

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA — **COMPLAINANT/RESPONDENT**

AND

1. **YINKA BELLO** — **DEFENDANT/APPLICANT**
2. **ENERGY FIELDS NIGERIA LIMITED** — **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 certain Alhaji Nura A. Ado, Mr Ajah Vincent, Mustapha Shehu Ahmed and Mohammed Goni by false pretence section 1(1)(b) of the Advanced Fee Fraud and Other Fraud Related Offences Act, 2006 and issuing dud cheques to the above named persons contrary to the provisions of section 1(1)(b) of the Dishonoured Cheque Offences Act. 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 21st day of October, 2021 on an 8-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.

Thereafter, Counsel to the Defendants informed the Court that he had a pending application for bail. Counsel for the Prosecution objected to the hearing of the application on the ground that it was not ripe for hearing. The case was therefore adjourned to the 26th of October, 2021.

On the 26th of October, 2021, learned Counsel for the Defendants informed the Court of his pending application. The application, which was brought by way of a Summons for Bail pursuant to the provisions of section 158, 163 and 165(1) of the Administration of Criminal Justice Act, 2015, sections 35(1), (4), 36(5) and 36(6)(b) of the Constitution of the Federal Republic of Nigeria 1999,as amended was dated and filed on the 20th of October, 2021 and had the Motion Number M/6977/2021. The motion prayed this Honourable Court for the following specific relief: "*An Order granting bail to the Defendant/Applicant, Yinka Bello, in respect of this charge pending the hearing and determination of the charge filed by the prosecution herein.*" There was also the omnibus prayer.

One Funmilayo Babatunde Bello of Block A8, Flat 2 4th Street, Games Village, Abuja, who claimed to be the younger sister of the 1st Defendant/Applicant deposed to the 20-paragraph affidavit in support of the

summons for bail. In a nutshell, the deponent swore that the 1st Defendant/Applicant had been conducting his business in the energy sector of the economy since 2001 professionally, responsibly, with integrity and without any blemish. She swore that though the nominal complainants gave certain sums of money to the 1st Defendant/Applicant to procure petroleum products for them, he was not guilty of the offences charged.

She added that following the invitation and subsequent interrogation of the 1st Defendant/Applicant by the Economic and Financial Crimes Commission in 2008 and other times, he was granted administrative bail. She averred that the 1st Defendant/Applicant had neither attempted to jeopardise the investigative process nor to absconded. She added that the 1st Defendant/Applicant had returned the sum of ₦20,000,000.00 (Twenty Million Naira) only out of the sum involved in the case. For these reasons, she urged the Court to admit the 1st Defendant/Applicant to bail in the interest of justice.

In the written address, learned Counsel for the Defendant formulated this issue for this Court to determine: "*Whether upon consideration of the facts deposed to in the supporting affidavit, the 1st Defendant/Applicant is entitled to the exercise of the discretion of this Honourable Court granting him bail on very liberal terms pending the conclusion of his trial on the charge herein*."

Arguing this sole issue, learned Counsel restated the time-honoured principle that the grant of bail was a matter that was within the discretionary powers of

the Court which must be exercised judicially and judiciously in consonance with the facts before the Court. He contended that bail was a right of an accused person which must not be refused except where the offence was a capital offence. Citing several authorities to buttress his arguments, learned Counsel asserted that the following principles had been established in a line of cases to guide the Court in the exercise of its discretion in this regard. The principles, according to learned Counsel, were: the nature of the charge, the severity of the punishment, the character of the evidence, the criminal record of the accused, the likelihood of the repetition of the offence and the likelihood of the accused person jumping bail. He submitted that the 1st Defendant/Applicant had satisfied the above conditions, moreso, as he voluntarily turned himself in to the Economic and Financial Crimes Commission. He therefore urged the Court to admit the 1st Defendant/Applicant to bail.

In support of his legal submissions, learned Counsel cited and relied on a plethora of constitutional, statutory and judicial authorities such as ***Ani v. State (2002) 1 NWLR (Pt. 747) 217; Bozakaze v. State (2006) 1 NWLR (Pt. 962) 507 at 518 para B; Oghmbe v. C.O.P. (2001) 5 NWLR (Pt. 706); Eyu v. State (1988) 2 NWLR (Pt. 78), Omodara v. State (2004) 1 NWLR (Pt. 853) 80; Onanefe Ibori & Another v. FRN & Ors (2009) 3 NWLR (Pt. 1127) 94 at 106;***section 35(1) of the Constitution of the Federal Republic of Nigeria

1999; Article 7(1) (b) of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act among other authorities.

The above was the position of the 1st Defendant/Applicant. The Complainant did not oppose the application for bail. He did not file any counter-affidavit or even reply on point of law. According to the Counsel for the Prosecution, "*We have no objection to the bail application and we wish to state same in writing.*" In a letter to this Honourable Court dated the 26th of October, 2021, Counsel for the Prosecution, S. A. Ugwuegbulam Esq. wrote: "*I hereby state under my hand and seal that the prosecution is not opposed to the application for bail of the defendant. My Lord may wish to grant him bail on terms that will ensure he comes to court to stand his trial.*" The position of the Prosecution in respect of the bail application therefore leaves the bail application of the 1st Defendant/Applicant unchallenged.

In determining this application, this Honourable Court will adopt the sole issue formulated by the 1st Defendant/Applicant in respect of the application, to wit: "***Whether upon consideration of the facts deposed to in the supporting affidavit, the 1st Defendant/Applicant is entitled to the exercise of the discretion of this Honourable Court granting him bail on very liberal terms pending the conclusion of his trial on the charge herein.***"

I must describe, at the very beginning, the nature of bail. Bail as a concept in the administration of criminal justice can be defined simply as the process

where a person accused of or being charged for the commission of a crime, is released by the constituted authority who is detaining him, on the condition that he will report or appear at the police station or court whenever his presence is required or ordered. Bail is provided for under the Constitution by virtue of section 35(4), is implied in the presumption of innocence guaranteed under section 36(5), is 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. Though the 1st Defendant/Applicant stated in his affidavit in support of his application and his Counsel contended in the written address that the 1st Defendant/Applicant was entitled to bail, 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.

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 issuing of dud cheques. 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 Dishonoured Cheques (Offences) Act, 2004, the offence carries a term of imprisonment of two years with no option of fine. Though the second offence is ordinarily bailable, the first is not; and the applicant must show that he deserves the Court's grace in that regard. This is where the affidavit becomes relevant.

The deponent deposed to the 1st Defendant/Applicant's conscientious and responsible business ethics in paragraphs 5 and 6 of the affidavit. She disclosed in paragraph 10 that the 1st Defendant/Applicant had returned the sum of approximately ₦20,000,000.00 (Twenty Million Naira) only to the nominal complainants. In paragraphs 9, 11, 12 and 13 of the affidavit she swore that the 1st Defendant/Applicant had always made himself available to the Economic and Financial Crimes Commission willingly each time he was invited and had, in fact, enjoyed administrative bail. In paragraph 14, she disclosed that the 1st Defendant/Applicant did not have any criminal record and would neither commit any offence if granted bail nor evade trial.

These are substantial statement of facts. Since the Prosecution did not oppose the application for bail, the Court must of necessity act on the facts and treat them as unchallenged.

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 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, 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."

I agree with the learned Counsel for the Defendants that the right to bail is a constitutional matter. Section 35(4) of the Constitution of the Federal Republic of Nigeria 1999 as amended 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."

The right to bail is, however, subject 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***.

Having reviewed the unchallenged affidavit evidence of the 1st Defendant/Applicant which is deemed admitted by this Prosecution, 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 ₦20,000,000.00 (Twenty Million Naira) only and two sureties 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 appointment letters and letters of last promotion and 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 1st Defendant/Applicant shall deposit his international passport with the Registrar of this Court.**

This is the Ruling of this Court delivered today, the 03rd day of November, 2021.

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HON. JUSTICE A. H. MUSA
JUDGE
03/11/2021