

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY,  
IN THE ABUJA JUDICIAL DIVISION,  
HOLDEN AT COURT NO. 7, APO, ABUJA  
BEFORE HIS LORDSHIP: HON. JUSTICE O.A. MUSA**

**SUIT NO. CR/01/2021**

**BETWEEN:**

COMMISSIONER OF POLICE --- COMPLAINANT/RESPONDENT

**AND**

1. ILIYASU SHAIBU

2. HAYATU YUSUF --- DEFENDANTS/APPLICANTS

**RULING**

**DELIVERED ON THE 21<sup>st</sup> MARCH, 2022**

By the way of motion on notice date the 12<sup>th</sup> day of March, 2021 and filed on the same day, brought pursuant to sections 158, 162 & 165 of the Administration of the criminal justice Act, 2015 and sections 34, 35 & 36 (5) of the constitution of the Federal Republic of Nigeria, (As Amended) and the inherent Jurisdiction of this Honourable Court.

The Defendants/Applicants praying for the following Orders:-

1. An Order of this Honourable court admitting the Defendants/Applicants to bail pending trial and the determination of the substantive suit.
2. And for further Order(s) as this Honourable court may deem fit to make in the circumstances of this case.

In support of this motion equally filed is a 13 paragraphs affidavit deposed to by Ibrahim J. Wodi, male, adult, legal practitioner, a Nigeria citizen of No. 5 Usman Sarki Crescent, Utako, FCT, Abuja a counsel in the firm of Henry AKunibi (SAN) Akunebi & Co. law firm. Counsels to the Defendants/Applicants.

Also filed is a written address in compliance with the Rules of this Court;

in which the Defendants/Applicants counsel formulates one (1) issue for determination to wit:-

Whether the Defendants/Applicants are presumed innocent, until found guilty and of course entitled to be granted bail by this Honourable Court.

In arguing the sole issue, Defendant/Applicant's counsel agrees that bail is a constitutional right of an accused person, who enjoys the protection of the Constitution under Section 36(6) CFRN 1999 (as amended). The affidavit in support of the applicant's application in line with section 162 of the ACJA 2015 copiously disclosed material facts which should be considered.

Counsel equally acknowledges that bail is at the discretion of the court. However, he submits that the court ought to be judicial and judicious in the exercise of its discretionary powers and admit the applicant to bail. Counsel refers the court to the case of EYE Vs. FRN (2018) 7 NWLR (Pt.1619) p. 495 SC.

The Defendant/Applicant's counsel submits further, that the constitution being the ground-norm in section 36 (5) provides that an accused person is presumed innocent, until found guilty by a court of competent jurisdiction. This rebuttable presumption inures in favour of the application.

In conclusion counsel prays the court to invoke the equitable and discretionary power of this Honourable court in granting this bail application. In response to the Defendant/Applicant's motion, the Complainant/Respondent's counsel filed a written address on point of law dated the 10<sup>th</sup> day of November, 2021 and filed on the 12<sup>th</sup> day of November, 2021.

Counsel raised a sole issue for determination to wit:

Whether the Defendants/Applicant's have placed sufficient and compelling material in their affidavit in support of their application before this Honourable court upon which the court can exercise its discretion in their favour.

Complaint/Respondent's counsel argues bail is not granted to a person or persons charged with a capital or serious offence(s) as a matter of course. That the Defendant/Applicant's in their application relied on sections 158, 162 and 165 of the Administration of criminal justice Act, 2015 and section 34, 35 and 36 (5) of the constitution of the Federal Republic of Nigeria, 1999 (As Amended).

That the said sections 158, 162 and 165 of the Administration of Criminal Justice Act, 2015 which governs the grant or refusal of an application of this nature does not in strict sense impose upon the court an objection to grant bail but situates the determination as to grant of bail firmly with the discretionary power of the court. He refers the court to section 161 of the Administration of Criminal Justice Act.

Counsel submits that in a capital offence specifically murder, bail is not usually granted to persons accused of commission of the offence. Counsel cites the case of OMODARA Vs. STATE (2004) 1 NWLR (Pt. 853) pg. 80 at page 89, paras F – G. counsel further submits that section 35(7) (a) is an exception to the general provision in sections 34, 35(4) (5), and 36(5) which provides that a person arrested upon reasonable suspicion of having committed an offence shall be charged to court within twenty four hours and forty-eight hours as the case maybe.

In conclusion the Complaint/Respondent's counsel argues that the Applicants have not placed sufficient materials before this Honourable court to entitle them to bail.

Counsel cites the case of ANI Vs. STATE (2002) 1 NWLR (pt. 747) page 217 at page 231. He urged this Honourable court to dismiss the application, remand the Applicants correctional facility and order accelerated hearing in the matter in the overall interest of the case.

I have carefully considered the arguments and submissions of both the counsel to the Defendants/Applicants and counsel to the Complaint/Respondent. And have raised one issue for determination to wit;

“Whether the Defendants/Applicants have placed sufficient and compelling material before this Honourable court to be entitled to and granted bail.”

In determining the sole issue, it is pertinent to note that a trial court has the discretion to admit an accused person to bail pending his trial. Like all other discretions, must be exercised Judicially and Judiciously. This implies that there must be sufficient and convincing reasons; this discretion must be based on facts and not in vacuo. See the case of UWAZURIKE Vs. A. G. FEDERATION (2008) 10 NWLR (pt. 1096) 444 at 449.

It becomes a challenge in striking a balance between the Constitutional principle of presumption of innocence, which by extension views incarceration as a form of punishment, and the need to ensure that Criminal offenders do not escape Justice by being at large. The court in UWAZURIKE Vs. A. G. FEDERATION (supra) enumerated the following factors as relevant consideration for grant or refusal of bail pending trial:

1. The evidence available against the accused
2. Availability of the accused to stand trial;
3. The nature and gravity of the offence;

4. The likelihood of the accused committing another offence while on bail.
5. The likelihood of the accused interfering with the course of Justice;
6. The criminal antecedents of the accused person;
7. The likelihood of further charge being brought against the accused;
8. The probability of guilty;
9. The detention for the protection of the accused;
10. The necessity to procure medical or social report pending final disposal of the case.

One must note that an accused person standing trial for a capital offence like murder is not ordinary entitled to bail, for the simple reason that murder is regarded as the highest crime under law and attracts the most severe punishment. See GALADIMA J. C. A in OMODARA Vs. STATE (2004) 1 NWLR (Pt. 853) 80. Hence the discretion of the court in granting its application.

The most important criterion in the exercise of the bail discretion is the availability of the accused to stand for his trial. This becomes more crucial where the offence attracts capital punishment. The court of Appeal in OGUERI Vs. THE STATE (2000) 5 WRN 27. Held that an accused charged for murder may be granted bail where:

1. The facts of deposition shows that at the time of the commission of the crime he is far away from the scene of the crime unless it is proven that he can be in more than one place at a time.
2. It is shown that the accused is suffering from such a debilitating disease or infirmity that he needs very urgent medical attention without which he will be in danger of losing his life particularly

where it is shown that confinement would generally aggravate his condition..

3. Where there has been inordinate delay in bringing the accused to trial, a stacks of affair which will either result in the accused staying longer in prison than the conviction and sentence and make reasonable people conclude that there has been a violation of the accused constitutional rights by a subtle manipulation by use of courts sometimes incomprehensible procedures.

At this juncture, one would ask what material the Defendants/Applicant's have placed before this Honourable Court to enable it exercise its discretion in their power? The answer is in the negative. The Defendants/Applicants have failed in showing any special circumstance that might make their application succeed. See the case of EZIKE Vs. STATE (2019) LPELR 47711 (CA).

Therefore the Defendants/Applicants application admitting them to bail has failed and is hereby denied. An Order for accelerated hearing in the matter is granted.

I so hold.

### **APPEARANCE**

I. J. Wodi Esq. for the Defendant.

Bunmi D. Aimola Esq. for the prosecution.

Sign  
Hon. Judge  
21/03/2022