

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
HOLDEN AT ABUJA**

THIS THURSDAY, 17TH DAY OF MARCH, 2022.

BEFORE: HON. JUSTICE ABUBAKAR IDRIS KUTIGI – JUDGE

CHARGE NO: CR/516/2019

MOTION NO: M/1730/2019

BETWEEN:

COMMISSIONER OF POLICE COMPLAINANT/RESPONDENT

AND

1. JONAH TERKUNDE

2. JOHN SABO

} **DEFENDANTS/APPLICANTS**

RULING

The Defendants were arraigned on a two counts charge as contained in the charge sheet dated 26th September, 2019. The Defendants pleaded not guilty to the two counts.

Learned counsel to the Applicants filed a motion for bail dated 9th March, 2020 and filed in the Registry of this Court on 10th March, 2022. In support of the Application is a 14 paragraphs affidavit with one annexure and a written address. The address dealt with the settled principles governing the grant of bail applications.

At the hearing, counsel to the Applicants relied on the paragraphs of the applicants' affidavit and adopted the submissions in the written address in urging the court to grant bail to the Applicants. The **Complainant** did not oppose the bail application and indeed did not file any counter-affidavit. The facts in support of the extant application are thus deemed in law admitted. At the hearing, counsel to the complainant left the issue of bail at the court's discretion.

I have carefully considered the totality of the depositions, the written submissions and oral adumbration on both sides of the aisle. The general principles that guide a court and the factors that the court will consider in determining whether or not to admit an accused person to bail pending trial have been well set out in the written address filed by counsel to the Applicant. I further refer to the authority of **Alaya V The State (2007) 16 N.W.L.R (pt.1061)483**, where the Court of Appeal held as follows:

“In the exercise of the discretion to grant bail to an accused person pending trial, the court has to consider the following:

- (a) The nature of the charges;**
- (b) The character of the evidence;**
- (c) The severity of the punishment;**
- (d) The criminal record of the accused;**
- (e) The likelihood of repetition of the offence;**
- (f) Evidence that should applicant be granted bail, the witness for the prosecution may be interfered with or prevented from appearing to testify; and**
- (g) Whether the applicant if granted bail, would fail to attend court to face his trial: Obaseki Vs Police (1959) NRNLR149; Dantata Vs IGP (1958) NRNLR 3.”**

On the authorities, it is not expected that all the above listed criteria will be relevant in every case and they are also not exhaustive and any one of these criteria or in combination of others may be used to determine the question of bail in a particular case. See **Bamaiyi V. State (2001)8 N.W.L.R (pt.715)270**.

Now under the relevant provisions of **ACJA 2015**, precisely under **Section 161**, the defendants who are facing a charge punishable with death are ordinarily not admitted to bail except under exceptional circumstances streamlined under **Section 162 (2) (a) – (c)**.

In this case, the unchallenged affidavit situates the extant application for bail within the purview of **Section 161 (2) (a) – (c)** are follows:

“(2) For the purpose of exercise of discretion in subsection (1) of this section,

(a) ill health of the applicant which shall be confirmed and certified by a qualified medical practitioner employed in a Government hospital, provided that the suspect is able to prove that there are no medical facilities to take care of his illness by the authority detaining him;

(b) extraordinary delay in the investigation, arraignment and prosecution for a period exceeding one year; or

(c) any other circumstances that the Judge may, in the particular facts of the case, consider exceptional.”

On the question of the alleged serious ill-health of Applicants, nothing was put forward or attached from a qualified medical practitioner employed in a Government Hospital to support the allegation that the Applicants suffer from “chronic malaria, cold pneumonia, diarrhoea and bronchial asthma” and the court will not speculate. In the absence of evidence, it is clear that these allegations stands unproven.

Most importantly, the court takes judicial notice of the fact that we have competent medical practitioners in the Correctional Facilities to attend to medical challenges of inmates and where there are medical issues that they can’t handle, the mater is usually transferred to another hospital where the condition will be better treated. No case was thus made to situate bail under **Section 162 (2) (a) (supra)**.

This then leads to the question of delay in prosecution under **Section 162 (2) (b) and (c) (supra)**.

Now from the unchallenged facts streamlined in the affidavit, the defendants vide paragraph 5 and the annexure attached vide **Exhibit A** show that police investigations concluded on 21st August, 2019 and by the Record, the charge was filed as far back as 28th September, 2019 but arraignment was done on 16th December, 2021 more than two (2) years after the conclusion of investigation and trial only commenced on 17th March, 2022.

There is therefore no doubt that the unchallenged facts in this case comes within the purview of **Section 161 (2) (b) and (c) of ACJA** situating extra-ordinary delay particularly in the prosecution of the case, which the court considers exceptional allowing for a favourable consideration of the bail application by defendants. The only point to note as I round up is that the charge defendants are facing is no doubt a serious charge and or offence and while the court is conscious of the presumption of innocence in their favour, this must be balanced with the corresponding need to ensure that the **defendants** are available to stand their trial.

This point I must confess has given me anxious moments. I however note that the defendants have stated that they are ready to provide adequate and satisfactory sureties. The court will thus accede or grant the application but on terms that will reasonably guarantee that they appear to stand their trial.

In summation, since the **complainant** has not in real terms opposed the application, the implication is that there is nothing from the other side stopping the court from exercising its discretion to grant bail. I accordingly grant bail to the defendants on the following terms:

- 1. The defendants are admitted to bail in the sum of N1, 000, 000.00 (One Million Naira) each with one surety in the like sum.**
- 2. The surety shall be a Civil servant not below Grade Level 08 within the jurisdiction of this court.**
- 3. The surety shall provide verifiable means of identification as a Civil servant; place of abode and also depose to an affidavit of means.**
- 4. Matter adjourned to 19th May, 2022 for hearing.**

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Hon. Justice A.I. Kutigi

Appearances:

- 1. Chinyere Moneme, Esq., for the Complainant with Charity Unogwu Esq.**
- 2. Mimidoo P. Anundum, Esq., for the Defendants with Joyce M. Nkun, Esq.**