IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT JABI-ABUJA

BEFORE HIS LORDSHIP: HON. JUSTICE BABANGIDA HASSAN

SUIT NO: CV/3474/2020

BETWEEN:

INSPECTOR GENERAL OF POLICE…COMPLAINANT/RESPONDENT

AND

1. **ABUBAKAR BELLO** …………DEFENDANT/RESPONDENT
2. **AMADU HASSAN** ……….…DEFENDANTS/APPLICANTS
3. **LAWAL USMAN**
4. **ADAMU MUHAMMAD** …….DEFENDANTS/RESPONDENTS
5. **ADAMU ALHAJI**
6. **SALISU SHEHU**
7. **MUDI USMAN** ……………DEFENDANT/APPLICANT

RULING

The 2nd, 3rd and 7th defendants in this case filed motion with N0. M/570/21 at Bwari Judicial Division dated the 9th day of November, 2012 and pray the court for the following orders:

1. An order of this Honourable court admitting the 2nd, 3rd and 7th defendants/applicants to bail pending the final determination of this case.
2. And for such further order (s) as this Honourable court may deem fit to make in the circumstances of this case.

The motion is supported by six paragraphed affidavit and a written address of counsel.

As at the time of moving this motion, the prosecution, having been duely served with the motion, has not filed a counter affidavit in response to the averments in the supporting affidavit. However, the prosecution after the motion has been duely moved and a date for ruling was taken, then filed its counter affidavit dated the 10th day of December, 2021.

Let me address on the issue of propriety or otherwise for this court to look into and consider the counter affidavit being filed by the prosecution after the motion for bail was moved and argued by the parties. To my mind, the action of the prosecution is an afterthought, this is because the motion was adjourned by the counsel to the defendants/applicants and the prosecuting counsel responded on points of law, and for all intents and purposes, this motion was duely argued by both parties, and what is remaining is for this court to rule and without necessarily looking into and to consider the counter affidavit filed after the motion has been moved and argued. See the case of **Ejezie V. Anuwu (2008) All FWLR (pt 422) p. 1017 at 1041, paras. E – G** where the Supreme Court held that once a motion is argued, the trial judge can rule on it as the law directs him. He has no duty to tell counsel mid -stream what he intends to do and require a reply from counsel. The orders are available to a trial judge after parties have argued the motion. One is to grant the motion, the other is to refuse it, which entails striking out. In the instant case, for the fact that the motion for bail has been argued by both parties, it is the duty of this court to rule in one way or the other.

It is in the affidavit of the 2nd, 3rd and 7th defendants/applicants that by reason of granting them bail, the investigation of the offence would not be prejudiced. That no risk of applicants escaping from justice would be occasioned. That no ground exists for believing that the applicants if released, would commit another offence. That the applicants have never in their life been convicted of any criminal offence. That the applicants are ready and willing to provide reasonable and reliable sureties to stand for them. That the applicants will always be present in court on subsequent adjourned dates until the final determination. That the applicants are innocent to the charges preferred against them.

In his written address, the counsel to the applicants submitted that this court has an unfeltred power to grant bail for the applicants no matter the nature of the offence, and he referred to action 36 (5) of the constitution of the Federal Republic of Nigeria 1999 (as amended), and the case of **Saidu V. State (1982) 4 SC 41.**

The counsel further submitted that the applicants have been in prison custody since 2016 and it is in the interest of justice that they be granted bail pending trial, and he referred to the Dictum of Nweze J. (as he then was) in the case of **State V. Okpala (2002) 3 LRC NCC 324 at 328** to the effect that it is settled that, there is nothing magical in the words "murder charge" or " armed robbery charge" to justify failure of the court from enquiring if the charge was not look up merely to ensure the detention of an innocent person.

In another motion with No. M/7908/2021 dated and filed the 12th day of November, 2021 by the 1st, 5th and 6th defendants whereof they pray to this court for an order granting them bail pending the determination of their trial,

and for such further order(s) as this Honourable court may deem fit to make in the circumstances.

The grounds upon which this application is filed are as follows:

1. The applicants were arrested sometimes in the second quarter of 2015 and charged with the alleged offences of armed robbery and illegal possession of fire arms.
2. That the applicants have been in detention since 2015 ranging from the police (SAS) facility for a period of one year and Nigeria Correctional Centre at Kuje Area Council of Federal Capital Territory from March, 2016 till date.
3. That the applicants pleaded not guilty to the charge and have denied having committed any offence, they are presumed innocent until proved otherwise.
4. That there has been serious extraordinary delay in the prosecution of the applicants' case as a result of frivolous adjournments more so with the elevation of Hon. Justice I. A. A. Banjoko, the judge hitherto handling the case, more delay is occasioned.
5. That bail is a constitutional right of the applicant and grant of same is at the discretion of the court, the exercise of which should be judicial and judicious and also to be guided by exceptional circumstances of the extraordinary delay in the prosecution of the defendants where the alleged offences are of serious nature in the instant case.

It is in the affidavit of applicants that the defendant/applicant was remanded at the correctional Centre Kuje Area Council, Abuja sometimes in March, 2016 till date on the order of this Honourable court after arraignment for the offences of conspiracy to commit robbery, armed robbery and illegal possession of firearms.

That prior to his arraignment, the 1st defendant/applicant was arrested on the 18th April, 2015 and had been in detention at the special Anti Robbery Squad, FCT Command, Abuja for almost a year being taken to court for the arraignment.

That the 1st defendant/applicant pleaded not guilty to the charges against him, and denied committing any offence when he was charged before the court sometimes in March, 2016.

That the trial in this case has not commenced till 22/06/2016 with serious delay occasioned by series of application for adjournments and grant of same by the prosecution, and that this case has lingered for more than six years hence suffered an extra ordinary delay through series of amendments, filing of several additional proof of evidence every other time as one was filed recently in 2019 and 2021 respectively, including but not limited to elevation of the judge handling the case, and that throughout the year of filing this application, this case has not been heard even once.

It is stated that with the elevation of Hon. Justice I. A. A. Banjoko, the judge previously handling the case, to Court of Appeal where by a new judge will handle, this case will have to commence denovo which is another serious but inevitable extraordinary delay.

It is stated that the 1st defendant is the bread winner of the family who takes care of his aged parents, one wife and three children and other numerous dependants.

The applicants attached to the affidavit the following documents, that is to say the charge sheet.

The affidavit of the 5th defendant is the replica to the affidavit of the 1st defendant, and so also the affidavit of the 6th defendant.

In a joint written address of counsel, he raised sole issue for determination, thus:

> **Whether the applicants have placed sufficient materials before this Honourable Court to merit the exercise of its discretion in favour of admitting them to bail?**

The counsel submitted that section 158 of the administration of Criminal Justice Act provides for general entitlement for bail to every accused person and section 165 of the same Act gives the judge absolute discretion with regards to the circumstances of granting bail to an applicant, and he cited the case of **Emmanuel Chinemelu V. C.O.P. (1995) 4 NWLR (pt 390) 467.**

The counsel submitted that the seeming circumstances militating against the applicants being admitted to bail may be argued to be the nature of the alleged offences but this has been watered down by the extra ordinary delay in the investigation and prosecution of the defendants. He opined that deposition in the affidavit in support have established that they have been in detention at the both police station and Nigerian Correctional Facility for over six years. The counsel referred to section 161 (2) of the ACJA which makes provision for exceptional circumstances under which courts can exercise discretion in grating bail to the applicants who are charged with capital offences, and he submitted that

this made the prosecution for that trial to extend beyond one year as statutorily provided as a guiding point in the exercise of the discretion more so that with the elevation of Justice I. A. A. Banjoko to the Court of Appeal, and the case to commence demovo.

The counsel submitted that sections 36 (1) & (4) of the constitution takes care of trial within reasonable time, and that the delay in prosecution of the defendants for over six years is out of the reasonable time and defeats justice.

He submitted further that another ground for consideration is whether the applicants have any criminal record before any court of competent jurisdiction for any offence or have ever been committed, and he referred to section 161 (2) (c) of the ACJA, and submitted that the applicants have never been convicted of any offence whatsoever.

The counsel submitted that it is not for the defendants to show cause why they should be admitted to bail, it is for the prosecution to show cause or advance cogent and verifiable reason as to delay. The defendants should not be admitted to bail, and he cited the case of **Ayus V. State (1988) 2 NWLR (pt 78) 602 at 610.** He opined that under the constitution bail is a right of the accused, and it is not denied except for good cause shown by the prosecution, and he cited the case of **Bolakale V. State (2006) 1 NWLR (pt 962) 507.**

Thus, the two motions, having moved and argued at the same time, this court is inclined to give one ruling.

Let me formulate the issue for determination in this application, thus:

> **Having regard to the fact and circumstances of this case, whether the 1st, 2nd, 3rd, 5th, 6th and 7th**

defendants/applicants are entitled to be granted bail?

One of the offences to which the defendants are charged is armed robbery perishable under section 1 (2) (a) & (b) of the Robbery and Firearms (Special Positions) Act , Cap. R II Laws of the Federation of Nigeria (LFN) 2004 which provides:

> **"if (a) any offender mentioned in sub-section (1) of this section is armed with any firearms any offensive weapon or is in company with any person so armed; or**
>
> **(b) at or immediately before or immediately after the time of the robbery the said offender wounds or uses any personal violence to any person, the offender shall be liable upon conviction under this Act to be sentenced to death"**

By the above quoted provisions, it can be inferred that the punishment for such offence carries death sentence, and therefore, the appropriate law to be applied in either granting or refusing bail is the provision of section 161 (1) & (2) (h) of the Administration of Criminal Justice Act which provides:

> **"(1) A suspect arrested, detained or charged with an offence perishable with death shall only be admitted to bail by a judge of the High Court under exceptional circumstances.**
>
> **(2) For the purpose of exercise of discretion in subsection (1) of this section "exceptional circumstance" includes:**
>
> **(b) extraordinary delay in the investigation, arraignment and prosecution for a period exceeding one year."**

In an application for bail, it is the affidavit evidence before it that a court should dwell on rather than the proof of evidence. See the case of **Eye V. F.R.N. (2018) All FWLR (pt 961) p. 1451 at 1467, para. H.**

The 2nd, 3rd and 7th defendants in their affidavit in support of their application did not advert their minds for the need to establish special circumstances that will warrant this court to grant them bail in line with the provisions of section 161 (1) & (2) (b) of the Administration of Criminal Justice Act, 2015. However, the 1st, 5th, and 6th defendants/applicants contend that they have been in detention since 2015 ranging from the police (SAS) facility for a period of one year, and Nigeria Correctional Centre at Kuje from March, 2016 till date, which is over five years, and that the trial in this case has not commenced till the 22nd day of June, 2016 with serious delay occasioned by series of application for adjournment by the prosecution, and that since the case has lingered for more than six years an extraordinary delay has occasioned, and that throughout the year of filing this application, that was 2021, this case has not been heard even once.

Thus, it was held by the Supreme Court in the case of **Okoye V. Centre Point Merchant Bank Ltd (2008) All FWLR (pt 441) p. 818 at 834, paras. B – C** that affidavit evidence is not sacrosanct. It is not above the evaluation of the courts, like oral evidence, a court of law is entitled to evaluate affidavit evidence in order to ensure its veracity or authenticity. While the uncontradicted affidavit evidence should be used by the court, there are instances when such affidavit evidence clearly tell a lie and the courts cannot be blind to such a lie. In the instant case, the defendants/applicants made heavy weather on the extraordinary delay in the prosecution of this case which to him has accessioned from the date of the

arraignment till date. It is on the above premise, that I have to look at the previous record of this court with a view to test the veracity of the affidavit evidence this is because, this case was re-assigned to this court through a transfer order made by the Honourable, the Chief Judge dated the 5th day of October, 2021. See the case of **Magaji V. Sacah (2009) All FWLR (pt 455) p. 1811 at 1820, paras. C – D** where the Court of Appeal, Kaduna held that what is entitled to look at its own record and proceedings on any matter and take notice of their contents although they may not be formally brought before the court by the parties.

I have painstakingly gone through the record of this court conducted by the previous judge, and have discovered that the defendants were arraigned on the 8th day of March, 2016, and their bail applications were refused on the 8th day of April, 2016. The court sat on various dates uninterruptedly as follows:

> **9/5/16; 22/6/2016, 4/7/16; 21/9/16;**
> **12/10/16; 26/10/2016; 31/10/16; 4/11/16;**
> **21/11/16; 1/12/16; 23/1/17; 6/6/17;**
> **28/9/17; 28/11/17; 23/1/19; 27/6/19;**
> **18/9/19; 19/11/19; 20/11/19; 21/11/19;**
> **21/9/2020; 8/12/2020; 28/12/2020; 4/2/20;**
> **and 29/3/21.**

Looking at the dates in which the court sat over this case, it can be seen that there is no interval from or between one adjourned date to the other that has taken up to the period of one year, and which invariably will constitute an extraordinary delay within the meaning of section 161 (1) & (2) (b) of the Administration of Criminal Justice Act, 2015 that will warrant this court to grant the bail of the defendants/applicants.

Thus, by the provisions of section 161 (1) and (2) (b) of the ACJA, in relation to an offence which carries death penalty, the burden is quarrely on the defendants/applicants to place materials before the court to show that they are entitled to be granted bail, this is contrary to the submission of the counsel to the applicants that it is the duty of the prosecution to show that the applicants are not entitled to bail as is envisaged in section 162 of the Administration of Criminal Justice Act, 2015.

In the circumstances of these applications, I hold the view that the defendants/applicants have not placed materials for this court to consider and to warrant it to grant them bail, and therefore, the applications lack merit and they are hereby dismissed accordingly. Instead, I order for accelerated hearing of this case.

Hon. Judge
Signed
3/02/2022

Appearances:

D. T. Abi Esq appeared for the prosecution.

M. M. Ogah Esq appeared for the 1st, 5th and 6th defendants.

M. Jibril Esq appeared for the 2nd, 3rd and 7th Defendants.

B. Wali Esq appeared for the 4th defendant.

4th DC – CT: In view of the ruling of the court this morning, and we are guided by the body language of the court because an application before the court is similar in body and character with the one determined by this court, and to this end we were indulgence of this to strike out the application and to proceed to hearing.

PC – CT: No objection.
CT: The matter is adjourned to 28th day of February, 2022 for hearing at 2:00pm.

Hon. Judge
Signed
3/02/2022