

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**

**IN THE ABUJA JUDICIAL DIVISION**

**HOLDEN AT JABI – ABUJA**

**THIS 16<sup>TH</sup> DAY OF MARCH 2022**

**BEFORE HIS LORDSHIP HON: JUSTICE A. A. FASHOLA**

**SUIT NO :FCT/HC/CR/130/2021**

**MOTION NO. M/9012/2021**

**BETWEEN**

**COMMISSIONER OF POLICE - - - COMPLAINANT**

**AND**

**UWA CHUKWU EBUKA - - - DEFENDANT/APPLICANT**

**RULING**

The ruling before this honourable court pertains to a motion on notice dated 8<sup>th</sup> December 2021 and filed on the 9<sup>th</sup> December 2021 by the counsel to the defendant/applicant herein. The motion was brought pursuant to section 35(1)36(5)and 41 of the 1999 Constitution of the Federal Republic of Nigeria, Section 158, 162 and 163 of the administration of Criminal Justice Act, 2015 and under the inherent jurisdiction of this court, the defendant/applicant is praying this honourable court for the following reliefs.

- 1. An order of this Honourable Court to admit the accused person to bail pending the hearing and determination of the suit.*
- 2. And for further or orders this honourable court may deem fit to grant in this circumstances.*

In support of the motion on notice is a 6 paragraphs affidavit deposed to by one Adeniji Oloruntosin a litigations secretary in the law firm of counsel to the defendant/applicant. The affidavit is dated 9<sup>th</sup> December, 2021 and filed on the same date. Attached therewith is a written address.

The learned counsel to the defendant/applicant in arguing the bail application herein contended in the main that the accused person has not been convicted of any previous offence that the constitutional right to liberty and the presumption of innocence is in his favour. He cited the provision of section 36(5) of the 1999 constitution of the Federal Republic of Nigeria (as amended) and section 158 and 162 and 163 of the Administration of Criminal Justice Act 2015. He relied on the case of **ONU OBEKPA Vs COMMISSIONER OF POLICE (1981)2NCLR 420 AT PAGE 422.**

Learned counsel cited the case of **LIKITA V. COP (2002)FWLR (PT. 106)1075 AT 1086** amongst others on the factors the courts would consider in granting bail application which includes:

- a. the nature of the charge*
- b. the severity of the punishment*
- c. the character of the evidence*
- d. the criminal record of the accused*
- e. the likelihood of the repetition of the offence.*

The learned counsel to the defendant/applicant cited the case of **UBA LTD VS STAHIBAN GMBH and CO KB (1989)3 NWLR (PT. 110)374** amongst other to the effect that the grant or refusal of this application for bail is at the discretion of this honourable court. He urged this court to exercise the discretion judicially and judiciously.

The learned prosecutor counsel did not file a reply on point of law to the bail application, and was therefore foreclosed.

The position of the law is that bail is a procedure by which a person arrested or detained in connection with the commission of a crime may be released upon security being taken for his

(release) appearances on a day and place as many be determined by the person or authority effecting the release. It is the process by which an accused person is released temporarily from state custody to sureties on condition given to ensure his appearance in court whenever given to ensure his appearance in court whenever he is required, see the cases of **ONYEBUATI V FEDERAL REPUBLIC OF NIGERIA (2009) ALL FWLR (PT.458)341 SULEIMAN V COMMISSIONER OF POLICE PLATEAU STATE (2008) ALL FWLR (PT. 425) 1627.**

The factors to be taken into consideration is granting bail includes the following considerations:

- a. *The nature of the offence and punishment prescribed.*
- b. *The nature, character and quality of evidence against the defendant.*
- c. *The possibility of the defendant interfering with further evidence, investigation and/or prosecution of the case if granted bail.*
- d. *The prevalence of the offence.*
- e. *Detention for the protection of the defendant.*

- f. The possibility of the defendant committing the same or similar offence while on bail.*
- g. The criminal record of the defendant.*
- h. On the grounds of ill-health*

see the case of **BAMAIYI V STATE (2001) 4 SCNJ ABACHI V STATE (2002)FWLR (PT. 98) 863.**

Having perused the application before this court very carefully, it is my humble view that the charge for which the defendant is standing trial fails within the purview of capital offences. The grant or refusal of an application for bail pending trial must be predicated on whether the crime allegedly committed and for which the accused is standing is of the highest magnitude, in other words, the court must be satisfied whether or not there is high prevalence of the offence charged within the polity or society, in the exercise of its discretion. See **ALI V. STATE (2012)10 NWLR (PT.1309)P. 589, ODO VS COP (2001)8 NWLR (PT. 874)46.**

Upon a careful perusal of the application before this court vis a vis the charge for which the defendant/applicant was brought, the decision to grant or refuse bail lies within the discretionary

power of the court which must be exercised judicially and judiciously see the case of **AHMED V. COP(2012)9 NWLR (PT. 1304)P. 104.**

It is trite law that in the exercise of discretion against the grant of an application for bail, the mere fact that the respondent does not file a counter affidavit is irrelevant, since the primary consideration is whether in the opinion of the trial judge the applicant has furnished sufficient materials to persuade him to exercise his discretion in the applicant's favour, See **ALI V STATE (2012)10 NWLR (Pt. 1309) PAGE 589 CA. OLATUNJI V FRN (2003)3 NWLR (PT. 807)406.**

Having considered the above and in line with the above cited authorities coupled with the fact that the prosecution has not filed any process to oppose the granting of the bail application herein, besides the offence for which the defendant is standing trial is a bailable offence.

In view of this, the defendant is hereby admitted to bail in the sum of N1,000,000.00 with two sureties in the like sum. Surety shall work with government agency with not less than grade level 15. One of the sureties shall deposit his international passport with the registry of this Honourable court. I so Hold.

**Appearances:**

Defendant in Court

Prosecution not in court

Victor Oziegbe for the defendant

Ruling read in open court

Signed  
Presiding Hon Judge  
16/03/2022