

**IN THE HIGH COURT OF JUSTICE OF THE
FEDERAL CAPITAL TERRITORY ABUJA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT MAITAMA - ABUJA**

BEFORE: HON. JUSTICE O. C. AGBAZA

COURT CLERKS: UKONU KALU & GODSPOWER EBAHOR

COURT NO: 6

CR/491/2019

BETWEEN:

COMMISSIONER OF POLICE.....PROSECUTION

VS

- 1. SAMUEL OLUCHÉ**
- 2. ABEL JAMES**
- 3. LUCKY YAKUBU**
- 4. GIDEON RICHARD.....DEFENDANTS/APPLICANTS**

RULING

The Defendants – Samuel Oluche, Abel James, Lucky Yakubu and Gideon Richard were arraigned on a Three (3) count charge of conspiracy, murder and being members of unlawful society, all offence punishable Section 97, 221 and 97B of the Penal Code.

By a Motion on Notice dated 10/1/2022, and filed same day with Motion No. M/073/2022, brought pursuant to Section 36 (5) of Constitution of Federal Republic of Nigeria, 1999, Section 158 (1), 161 (2) (b) & (C) of the Administration of Criminal Justice Act, 2015 and under the inherent powers and jurisdiction of this Honourable Court. The Applicants prays for the following reliefs:-

- (1) An Order of Court admitting the 1st, 2nd, 3rd and 4th Defendants/Applicants to bail on liberal terms pending the hearing and determination of the substantive case.
- (2) Omnibus Relief.

In support of the application is a 12 paragraph affidavit sworn to by one Samuel Ibh. Also filed is a Written Address, and adopted in urging the court to grant.

In opposition, the Prosecution filed a 12 paragraph Counter-Affidavit on 26/1/2022 sworn to by one Ase Umar Mohammed. Also filed is a Written Address and adopts same, and relying on Section 161 of ACJA, submits that the Applicants have failed to satisfy the condition for the grant of Bail, therefore urge this court to refuse this application.

In the Written Address of the Defendants/Applicants Counsel, settled by Nochano Emmanuel Esq, dated 10/1/2022, no issues was formulated, but counsel submits that it trite that the grant of an application of this nature is at the exercise of the court's discretion, which must be done judicially and judiciously. That in this instant case the Applicants have by their Paragraphs 7 – 12 of the supporting affidavit shown good grounds for the consideration of bail in favour of the Applicants. Further submit that the detention of the Applicant since April 2019 is a ground of exceptional circumstance for which the court can give due consideration in the exercise of that discretion. Relying on the case of Bamayi Vs State (2001) FWLR (PT. 46) Pg 956 @ 984 Para G, Section 36 (5), 36 (6b) of Constitution of Federal Republic of Nigeria, 1999; that the Applicants are not going to

jump bail, rather present themselves to court through the trial. In all urge the court to grant the reliefs sought.

In the Written Address of the Prosecution, settled Fidelis Ogbobe, no issue was formulated, but submits that the Applicants have not satisfied this court, by showing exceptional circumstance to warrant this court to grant this application, moreso, the offence carries with it, death sentence. And relied on Section 161 of ACJA. Further that the alleged delay in trial by the Applicants as the exceptional circumstance to assuage this court does not enure in favour of the Applicants. That formal charge has been laid before the court and case is on-going. Referred to case of Ozougwu Vs State (2006) 9 NWLR (PT. 985) 240. CA and urge the court to refuse this application.

Having carefully considered the affidavit evidence, submission of both counsel and the judicial authorities cited, the court finds that only one issue calls for determination, which is;

“Whether or not the Applicants in this instance application, has shown sufficiently grounds to warrant this court to grant the relief sought”.

In the consideration of bail application, the primary consideration is the exercise of the court’s discretion, in line with the law and must be done judiciously and judicially. See the case of Ogbuoma vs F.R.N (2011) 12 NWLR (PT. 1260) Pg 100 @ 104 Ratio 1. Dokubo Asari Vs F.R.N. (2007) ALL FWLR (PT.375) Para B – F. Granted that the guidelines set is not

exhaustive, the court must consider every details provided by the Applicant in the affidavit in support.

In this instant application, the Applicant relying on their affidavit, stated facts to supports the application for bail, Para 4 and 5, which basically, isthat the Applicants have shown exceptional circumstance to warrant the grant, regardless of the facts that they are on a charge that carries a sentence of death penalty and the fact thatthey would not jump bail and ready to produce good sureties.

The prosecution Counsel on the other hand is opposed on the ground earlier stated, particularly that the Applicants have not shown sufficiently exceptional circumstances to enable this court to exercise its discretion as espoused in the case of Uzaugwu Vs State (Supra) and Section 161 (2) of ACJA, 2015.

I have carefully considered the facts relied on as exceptional circumstance, and the court on carefully perusal of its records finds that indeed the Applicants were arraigned 14/11/2019 and the matter proceeded to hearing, except for a few delays in the trail which is not entirely at the fault of the Prosecuting Counsel. I have also read the Section 161 (2) of ACJA, 2015 and the case of Uzougwu Vs State (Supra) and find that the Applicants have not been able to satisfy this court with sufficient exceptional circumstance, to warrant this court to exercise that discretion in their favour. Without intending to jeopardize the Applicant's right to personal liberty and presumption of innocence guaranteed by the Constitution of Federal Republic of Nigeria, 1999 (as Amended). It is my

firm view that this application be refused, having found that exceptional circumstance have not been shown to assuage this court to grant. I shall however, press for accelerated hearing.

Signed

HON. JUSTICE O. C. AGBAZA

Presiding Judge

26/5/2022

APPEARANCE

NOCHANNA EMMANUEL ESQ. FOR THE DEFENDANTS/APPLICANTS

FIDELIS OGOGBE ESQ FOR THE PROSECUTION