

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

**IN THE ABUJA JUDICIAL DIVISION**

**HOLDEN AT MAITAMA**

**BEFORE HIS LORDSHIP : HON. JUSTICE Y. HALILU**

**COURT CLERKS : JANET O. ODAH & ORS**

**COURT NUMBER : HIGH COURT NO. 14**

**CASE NUMBER : CHARGE NO: CR/316/2019**

**DATE: : MONDAY 11<sup>TH</sup> APRIL, 2022**

**BETWEEN:**

**COMMISSIONER OF POLICE .....CLAIMANT**

**AND**

**BERNARD OMATOLA ... DEFENDANT/APPLICANT**

# **RULING**

The Defendant/Applicant approached this Honourable Court vide a Motion on Notice seeking for an order admitting him to bail pending trial and for such further order or orders as the court may deem fit to make in the circumstances.

In support of the application is a 21 paragraph affidavit duly deposed to by one Gabriel Omachona, an uncle to the Defendant/Applicant.

It is the deposition of the Defendant/Applicant that he was arrested and detained at the Nyanya Police Station since September, 2018, and later arraigned at Grade 1 Area Court, Karshi, and without jurisdiction, ordered to be detained at the Keffi prison under an unbearably inhumane condition

since 6<sup>th</sup> November, 2018, until 4<sup>th</sup> February, 2019 when he was admitted to bail by the court.

That during the pendency of the case before the Grade 1 Area Court, the Prosecution announced the termination of the case from court but upon the case being struck out, the Defendant/Applicant was re-arrested at the court premises by the police and again detained at the Nyanya Divisional Police Station.

That while the Defendant/Applicant was still in detention, the matter was later transferred to the FCT Police Command at Garki, where the Defendant/Applicant was refused bail and detained for a long time without justification.

That when the matter was eventually charged to the High Court, the Defendant/Applicant was granted

bail but on such onerous terms that the Defendant/Applicant could not fulfill.

That the Defendant/Applicant, through his counsel, applied for a review of the bail conditions, and same was granted and reviewed from 2 to one public officer not below the rank of Assistant Director who has landed property within the FCT.

That he was informed by Bernard Omatola the Defendant/Applicant and he verily believes him that he;

- a. Is innocent of the alleged offence he is being charged with.
- b. Will be available to attend court and stand his trial, and shall not jump bail.

- c. Will not interfere with the investigation of the alleged offence, which has already been concluded.
- d. Will not commit any or other crime while on bail.
- e. Has no criminal antecedent.

That the Defendant/Applicant has been in detention at different police stations at Nyanya and Garki, and at the Keffi and Kuje Correctional Centers for this alleged offence since 2018.

That it is in the interest of justice and fair play to grant this application on very lenient terms to enable the Defendant/Applicant to prepare for his trial and defence.

A written address was filed wherein, learned counsel to the Defendant/Applicant submits that the grant or refusal of bail application is essentially at the discretion of the court. That such discretionary power ought to, in any circumstances, be exercised judiciously and judicially in the best interest of justice and fair play.

Section 158 and 165(1) of the Administration of Criminal Justice Act (ACJA), 2015; *BAMAIYI VS STATE (2001) 5 SCM 20 at 34;*

*ANAJEMBA VS FGN (2004) 13 NWLR (Pt. 890) 267 at 283 – 284 were cited.*

Counsel further submits that constitutionally, and universally in the jurisprudence of cultured nation, the Defendant/Applicant is presumed to be innocent until proven guilty by the court. Section 36(5) of the

Constitution of the Federal Republic of Nigeria, 1999 (as amended); Articles 6 and 7 of the African Charter on Human and People's Rights (Ratification and Enforcement) Act, Cap. A9 LFN, 2004; Articles 9, 10 and 11 of the Universal declaration of Human Right, 1948 were cited.

On the whole, counsel urged the court to grant the Defendant/Applicant bail on very light and liberal terms in the interest of justice and fair play, considering that he has been in detention since 2018.

Upon service, complainant/Respondent filed a counter affidavit in opposition to the Bail application deposed to by one Philip Turba a litigation clerk (CID) FCT Police Command, Abuja.

It is the deposition of the complainant that paragraph 6 -8 of the Defendant/Applicant affidavit contain true and false averments.

That in response thereto, the Applicant was arrested and charged before Area Court Karshi but upon petition by the nominal complainant, the case file was transferred to FCT Police Headquarters for proper investigation.

That sequel to the application for transfer of case file, the complainant had to terminate the case in court but the complainant did not know how long the Applicant stayed in prison custody because the Defendant/Applicant was remanded at the instance of the court.

That the Defendant/Applicant is not innocent of the alleged crime, because investigation reveals prima facie case of rape of a minor against the Applicant.

That if the Applicant is granted bail he may not come to court to face his trial because it took extra effort of the police to re-arrest him after granting him bail.

That Defendant/Applicant may likely interfere and influence Prosecution witnesses which may affect the successful prosecution of the case because they live in the same vicinity.

That the purported surety whose identity is not known cannot guarantee the constant attendance of the Defendant in Court.

A written address was filed along with the affidavit wherein a sole issue was raised for determination to wit;-

*“Whether having regards to the circumstance of his case, the Applicant is entitled to the favorable exercise of the court’s discretion to grant him bail pending the determination of the case.”*

Learned counsel submits,that considering the nature of the offence the Applicant has not justified the legal requirements to enable the court exercise its discretion in his favour. Counsel urged the court to hold that the Defendant has not placed any special and exceptional circumstance before this court to justify the grant of bail.

Counsel therefore urged the court to dismiss the entire motion for lack of merit and devoid of any substance.

On their part, Defendant/Applicant replied on point of law.

It is the argument of learned counsel that paragraphs 8, 9, 10 and 11 respectively of the affidavit are incompetent and should be struck – out from the counter affidavit as they offend the provision of section 115(2) of the evidence Act, 2011.

Counsel further submits that when an affidavit contains extraneous matters by way of objections, prayers or legal arguments or conclusion, they are liable to be disregarded and struck – out by the court. ***MILITARY GOVERNOR OF LAGOS STATE VS OJUKWU (2001) FWLR (Pt. 50) 1779;***

***LAGOS STATE GOVERNMENT VS NIGERIA  
DEPOSIT INSURANCE CORPORATION & ORS  
(2021) 2 NWLR (Pt. 1760) 297 at 315 Paragraphs  
C-E (CA) were cited.***

Learned counsel urged the court to discountenance and disregard paragraphs 8,9,10 and 11 of the counter affidavit and accordingly have them struck – out as they offend section 115 (2) of the Evidence Act, 2011 as expounded in the judicial decision cited above.

Learned counsel submits that the Defendant/Applicant having stated unequivocally and incontrovertibly that he shall be available to attend his trial and shall not jump bail, counsel urged the court to discountenance the objection by the prosecution, and exercise discretion in favour of the

Defendant/Applicant and grant him bail on very liberal terms.

### **COURT:-**

On the part of court, in considering whether to grant or refuse bail to an accused person, the court is guided by the following factors:-

- 1) Nature of the charge
- 2) The severity of the punishment in the event of conviction.
- 3) The strength of the evidence by which the charge is supported.
- 4) The criminal record of the accused, if any
- 5) The likelihood of the repetition of the offence

- 6) The probability that the accused may not surrender himself for trial, thus not bringing himself to justice.
- 7) The risk that if released, the accused may interfere with witnesses or suppress the evidence likely to incriminate him, and
- 8) The necessity to procure medical treatment or social report pending the disposal of the case  
***OHIZE VS C O P (2014)LPELR 23012 (CA).***

It must be borne in mind that in all these factors, the most important for consideration or the most proper test whether bail should or not be granted is the probability of whether the accused/Applicant will appear to take his trial and will do nothing to frustrate the case.

Bail is a constitutional right of an accused person and it is contractual in nature. The effect of granting bail is not to set the accused free for all time in the criminal process but to release him from the custody of the law and to entrust him to appear at his trial at a specific time and place.

Indeed, application for bail pending trial is generally a matter of course unless some circumstances militate against the grant of it. Bail pending trial is a constitutional right, the burden is on the prosecution who oppose bail to prove that facts relied upon by the Applicant, do not warrant the granting of bail. This is because of the constitutional presumption that a person is presumed innocent until proved guilty. See section 36(5) of the 1999 constitution as amended, lends support.

In the case under consideration, the prosecution stated in paragraphs 8 and 9 of their counter affidavit in opposing the bail of the accused person that the accused person will jump bail if granted and that there is prima facie case against the Defendant/Applicant.

I make bold to state here that whether there is prima facie case or not, it is for the court to determine not the prosecution. And that the averment that accused person will jump bail is speculative. Courts of law are not to speculate.

In the court's opinion, this is the only strong ground raised by the prosecution in opposing the bail.

Whereas the Applicant in his affidavit in support of the motions for bail that if granted bail, will not

jump bail and shall provide a reasonable surety to stand to for him.

An accused's presence in court to stand trial is uppermost, as far as the consideration of Bail is considered. Once such attendance is secured, court can grant Bail in deserving circumstances since the constitutional presumption of innocence avails such an accused person. See ***COP VS. SULEIMAN***.

A court has discretion to admit an accused to bail or not and the definition of discretion is based on personal judgment and conscience of the judge.

My conscience as judge has not been appealed to exercise direction infavour of the accused person.

Bail is refused. I however hereby order accelerated hearing.

***Justice Y. Halilu***  
***Hon. Judge***  
***11<sup>th</sup> April, 2022***