

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/42/2015

DATE: : TUESDAY 28TH JUNE, 2022

BETWEEN:

**FEDERAL REPUBLIC OF NIGERIA } COMPLAINANT
/RESPONDENT**

AND

**1. BASHIR YUGUDA
2. COL. MOHAMMED SAMBO
DASUKI (RTD.)
3. DALHATU INVESTMENT LTD.
4. SAGIRATTAHIRU
5. ATTAHIRU DALHATU BAFARAWA } DEFENDANTS
/APPLICANTS**

RULING

2nd Defendant/Applicant vide a Motion on Notice approached this Honourable Court for the following:-

- i. An Order of Court, granting leave to the 2nd Defendant/Applicant to travel abroad for a ten – week specialized medical consultation/review, having renewed his international passport with a corresponding visa to the United States of America, in that regard.
- ii. And for such Orders or other Order as this Honourable Court may deem fit to make in the circumstances of this case.

In support of the motion is 16 paragraph affidavit deposed by One Adejumo Ademola legal practitioner in the firm of Ahmed Raji & Co.

It is the deposition of the deponent that she is aware that the 2nd Defendant's house was invaded by men and officers of the Department of State Service, sometime in July, 2015, in consequence of which he was charged to court.

That he is aware as a fact that the Federal High Court on 1st September, 2015 admitted the 2nd Defendant/Applicant to bail on self – recognisance.

That he is also aware that on 3rd November, 2015, the said Honourable Court granted leave to the

2ndDefendant/Applicant to travel abroad for a three – week medical consultation.

That the Complainant, through the Department of State Service (DSS), barricaded the 2ndDefendant/Applicant's house and refused him the opportunity to travel abroad for the said medical treatment.

That I know as a fact that the Complainant deliberately disallowed the 2ndDefendant from travelling abroad for the medical treatment, because of a supposed investigation on money laundering offences, which was eventually charged in court.

That upon service of the Charges, the 2ndDefendant applied to be admitted to bail in the

said Courts and both Courts graciously granted his application.

That he suffers from an acute colorectal cancer lesion at the lower abdominal region, and has medically managed it for a long period of time;

That no specialized treatment was afforded him in the Department of State Service (DSS) facility, throughout the four – year period, wherein he was unlawfully detained;

That apart from his failure to keep up with the appointment scheduled by his specialized medical doctor since 2015 when he was held in custody, he now experiences excruciating pains resulting from several complications, which require urgent medical attention.

That there is a compelling necessity for him to go abroad, for a comprehensive medical routine and review by a specialized medical consultant who has been managing the medical ailment for a long time;

That he sought for the said release, in order to renew the International Passport, procure a corresponding Visa and travel abroad with the leave of Court, for the specialized medical consultation/review;

That on 13th February, 2020, this Honourable Court graciously directed the central Registry to release the Applicant's International Passport, for him to renew same.

That the expired International Passport has now been renewed, with a corresponding visa to the United State of America.

That upon renewal, the Applicant was unable to apply for leave to travel due to the Covid – 19 lockdown, ENDSARS Protests and JUSUN Court Strike, hence his health condition has deteriorated further.

That the occasion for him to travel for the specialized medical consultation, will greatly assist him to stand trial, without any form of itch or break down in health.

In line with the law, a written address was filed along with the application wherein a sole issue was submitted for determination to wit;

“In view of the 2nd Defendant/Applicant’s detention ordeal and peculiar circumstance of this case, whether the discretion of this court ought not to be exercised in his favour, for the grant of reliefs sought in the motion paper.”

Learned counsel to the 2nd Defendant/Applicant vide Exhibit “E” series avers that the 2nd Defendant/Applicant suffers from an acute colorectal cancer lesion at the lower abdominal region, and has medically managed it for a long period of time. Unfortunately, while he was unlawfully detained by the Department of State

Services (DSS), for 4 years, he was not afforded any specialized treatment, and the ailment has consistently deteriorated.

Having been released on 24th December, 2019 by the Department of State Services (DSS), it is imperative that the Applicant is allowed to travel abroad, for a comprehensive medical review by the consultant who has managed him over the years.

Counsel submits that the discretion, powers, functions and authority of this court remain indefatigable, for all intent and purposes. The reliefs sought by the 2nd Defendant/Applicant are worthy of favourable considerations, in the peculiar circumstances of this case.

That aggregate set of facts contained in the supporting affidavit, including the case laws and cited legislative enactments, all lean to an irresistible conclusion, that there is merit in this application. The intervention of this Honourable Court is being sought at this time, not only because the 2nd Defendant seeks reliefs, in the motion paper but also because the courts have been appointed sentinels to watch over the right secured to the people. ***OLAWOYIN VS. ATTORNEY GENERAL, NORTHER REGION (1962) 1 ANWL 324 at 327 FSC;***

BELLO VS. AG OYO STATE (1986) 5 NWLR (Pt. 45) 828 at 890 were cited.

Counsel urged the court to resolve the instant issue, in favour of the 2nd Defendant/Applicant and grant same.

On its part, Complainant/Respondent filed 19 paragraph affidavit deposed to by one Mohammed Goji a Detective with the Economic and Financial Crimes Commission (EFCC) in opposition to the 2nd Defendant/Applicant motion dated 22nd July, 2021.

It is the deposition of the Complainant/Respondent that the 2nd Defendant was the National Security Adviser at the time material to the intelligence report.

That the Defendant/Applicant is a retired Colonel in the Nigerian Army and the immediate past

National Security Adviser for the whole of Nigeria.

That sometime around 1995 the Applicant herein while on trial in Nigeria had jumped bail and fled from justice out of Nigeria.

That if the instant application is granted and the Applicant is allowed to leave Nigeria, the Applicant will escape from the jurisdiction of this Honourable Court and from Nigeria and will not return to face his trial.

That it is extremely curious that while the Applicant was in the custody of the Directorate of State Service (DSS) he did not claim to suffer from any health condition that would warrant him traveling out of Nigeria for treatment but upon his

release he now claims to have health conditions that require him traveling out of Nigeria for treatment.

That the Applicant has not in any way justified his request to travel out of Nigeria on medical grounds as there is nowhere it is stated in the instant application that the health conditions upon which his application is based, cannot be treated in Nigeria.

That apart from the instant case and **Charge No. FCT/HC/CR/43/2015** which is also pending before this Honourable Court, the Applicant is being prosecuted at the Federal High Court, Abuja in Charge No: **FHC/ABJ/CR/319/15 – FRN VS. COL. MOHAMMED SAMBO DASUKI** on account of illegal possession of fire arm.

That because of the antecedent of the Applicant and the fact that other charges are pending against him in different courts, it is not safe to grant the instant application.

That the offences being alleged against the Defendant/Applicant border on economic sabotage that strikes at the very foundation of Nigeria's wellbeing and existence.

That the security of the Nigerian Nation was compromised and the lives of innocent Nigeria Soldiers in the battlefield against terrorists were endangered on account of diversion of the funds meant for the security of the Nation by the Applicant herein.

That the Prosecution is prepared to prove its case within the shortest possible time if the application is refused and the Court orders accelerated hearing.

In line with the law and procedure, Complainant/Respondent filed a written address wherein a lone issue was raised for determination to wit:-

“Whether the 2nd Defendant/Applicant is entitled to the relief sought before this Honourable Court having regards to the circumstances of this case”

Counsel submit that, it is the law that the rights contained in chapter 4 of Constitution of the Federal Republic of Nigeria 1999 are not absolute

as same can be curtailed in appropriate occasions. The facts deposed to in the counter affidavit abundantly establish the nature of the allegations against the 2nd Defendant/Applicant.

The deposit of the 2nd Defendant/Applicant's international passport being part of the security to ensure his appearance cannot be released as a matter of course. It is with this security/condition that the court may compel the appearance of the 2nd Defendant/Applicant. While holding on the effect of granting bail in ***SULEMAN & ANOR VS. COP PLATEAU STATE (2008) LPELR – 3126 (SC)***.

Counsel submit that, the mere fact that the 2nd Defendant/Applicant is sick, and without more, will not qualify or entitle him to the grant of this

application, this is because even in consideration of an application for bail where the Applicant is still in custody; mere sickness without more cannot warrant the grant of bail. ***JIMOH VS. COP (2004) LPELR 11262 (CA);***

ABACHA VS STATE (2002) LPELR 15 (SC)
were cited.

Learned counsel submits that, the claim and application of the 2nd Defendant/Applicant is curious in that, there was no such report of deteriorating medical conditions during the 4 years period when the Applicant was in the detention facilities of the Department of State Service (DSS) if the claim is now anything to go by, the 2nd Defendant/Applicant is currently not in custody – a situation which would have limited his

access to medical care. The 2nd Defendant/Applicant has been granted bail and now has the latitude to access all available medical care in Nigeria. Besides nowhere has it been established that the purported medical care which the 2nd Defendant/Applicant requires is not available in the 36 states of Nigeria and the Federal Capital Territory. The mere fact that the Applicant had been seeing a physician outside Nigeria cannot be a ground to validate the instant application. If he had been seeing a physician outside Nigeria when he was not on trial, now he is on trial and must satisfy this Honourable Court that the ailment he suffers from cannot be treated anywhere in Nigeria in the words of *STATE*

***VS. IBRAHIM & ORS (2014) LPELR – 23468
(CA)***

Counsel submits that presence of the accused person at trial will not be guaranteed if this application is granted. Counsel further submit that the evidence against the 2nd Defendant/Applicant is weighty enough to make this Honourable Court hold that he is not entitled to the grant of this application. ***NGWUTA JCA stated in IKAHAZUAGBE VS. COP (2005) ALL FWLR (Pt. 266) 1323 at 1337;***

ALHAJI MOHAMMED SHETIMA BULAMA VS. FRN (2004) 12 NWLR (Pt. 888) 498 at 509;

DARIYE VS. FRN (2015) 6 NWLR (Pt. 1467) 325 were cited.

Learned counsel submit that, the Applicant has not placed sufficient materials before this Honourable Court to entitle him to the grant of this application and also that the Prosecution is prepared to prove its case within the shortest possible time if the application is refused.

Counsel submits that, it is rather desirable to accelerate the trial in this situation. ***BAMAIYI VS STATE & ORS (2001) LPELR 731 (SC) was cited.***

On the whole, Counsel urged the court to dismiss the application as the Applicant cannot be said to be entitled to the application given the circumstances of the case.

On their part, 2nd Defendant/Applicant filed further affidavit in reply to the Complainant/Respondent's counter affidavit of 1st September, 2021.

The further affidavit deposed to by one Tofarati Adewole a legal practitioner in the law firm of Messrs Ahmed Raji & Co. of 16 paragraph affidavit wherein the deponent stated that the entire depositions stated in the Counter affidavit are not correct and largely borne out of speculation.

That contrary to the depositions stated in paragraph 7(i) – (xxv) of the Counter Affidavit, I know as a fact that the allegations in the paragraphs form the subject matter of the criminal charge before this Honourable Court against

which a constitutional presumption of innocence ensued in favour of the 2nd Defendant/Applicant.

That contrary to Paragraph 7(iv) of the counter affidavit that funds released to the office of the National Security Adviser were not for combating terrorism and insurgency as alleged.

That contrary to paragraphs 9 and 10 of the counter affidavit, it is not true that he jumped bail in 1985 or at any other time.

That if granted leave to travel abroad for medical treatment, he will return back to Nigeria to face his trial.

That contrary to paragraphs 11 and 12 of the said counter affidavit, that he was dealing with the said acute colorectal cancer lesion at the lower

abdominal region while in the custody of Department of State Service (DSS) and same was managed.

That in response to paragraphs 13 and 14 of the counter affidavit, he know as a fact that the 2nd Defendant/Applicant has been diligent in attending court for his trial and he intends to continue attending Court to defend his integrity and name.

That since the Applicant was granted bail by this court in the instant case and the case before the Federal High Court in *FHC/ABJ/CR/319/15 between FRN VS. COL. MOHAMMED DASUKI*, the Applicant has not done anything to interfere or frustrate his trial, and has attended court diligently.

That nothing from the conduct of the 2nd Defendant/Applicant suggest that he will not return to Nigeria to continue facing his trial if the instant application is granted.

That in response to paragraph 17 of the counter affidavit, he knows as a fact that the grant of accelerated hearing cannot dispense with the instant application seeking your Lordship's leave for the Applicant to travel abroad for medicals.

2nd Defendant/Applicant filed reply on points of law wherein, counsel submits that Applicant has a right to freedom of choice of medical attention. The Complainant's contention that the Applicant did not complain that his ailment cannot be treated in Nigeria does not hold water.

Learned counsel submits that, the Applicant has been granted bail by this Honourable Court and for all intent and purposes, he should be allowed to enjoy his bail. It is therefore our submission that the Complainant cannot restrain the Applicant's freedom of movement.

Counsel submits that, the right as described above are sacrosanct and except a Defendant willfully absconds from his trial (which the present Defendant cannot be accused of as he has faithfully attended his trial since inception) his enjoyment of the bail granted ought not to be hindered or abridged in any way.

Counsel submits that, with the greatest respect that the import of this highlight is intended to meet the justice of each case, as the occasion demands.

Since this Honourable Court has powers to grant the reliefs sought in this application, counsel humbly urge that the reason necessitating the filing of this application be considered just for the grant of the relief sought. The relief sought for in this application is one on the discretionary powers of this noble court. ***SULEMAN VS. C.O.P PLATEAU STATE (2008) 8 NWLR (Pt. 1089) 298 at 317 Paragraph G was cited.***

Counsel submits further that, in criminal justice system, an Accused Person is entitled to be given adequate time and facilities for the preparation of his defence. This position of the law is also supported by the grundnorm of the land, Section 36(6)(b) the Constitution of the Federal Republic of Nigeria 1999 (as amended).

Learned counsel respectfully submit that, the application seeking leave to travel abroad on medical ground, falls within the facilities, for the purpose of preparing for the defence of the Applicant. The Applicant would only be able to stand his trial before this court if he is medically fit.

Counsel urged the court to grant the application.

COURT:-

I have gone through the application of the 2nd Defendant/Applicant, Col. Mohammed SamboDasuki (Rtd.) who seeks leave of this court to travel abroad for a ten (10) week specialized medical consultation/review having renewed his International Passport with a corresponding Visa

to the United States of America, on the one hand, and the objection of the Complainant/Respondent who have predicated their objection on the fact that Applicant who has not given adequate reason and particulars of his ill-health will abscond and never return to Nigeria, given the nature of the charge against him, on the other hand.

It is instructive to note that a similar application of this nature was made before my brother judge of the Federal High Court, Coram Hon. Justice A.F.A Ademola, wherein the same Applicant applied for the release of his International Passport to enable him travel abroad for medical appointment over a deteriorating medical condition.

The said Applicant was granted bail by my brother which I am enjoined to take judicial notice of... I hereby do take such notice. It is the argument of Raji, SAN, that Prosecution who did not appeal against the said ruling should not be opposing the instant application.

On the argument of the Complainant/Respondent that Applicant once refused to attend court, Applicant's counsel contended that Applicant who was detained by DSS, was not allowed to attend court and that since his release from DSS, he has always appeared in court for his trials.

Permit me to note that once a Defendant who enjoys the benefit of presumption of innocence Pursuant to Section 36(5) of the Constitution of the Federal Republic of Nigeria (FRN) 1999 (as

amended), is granted Bail, and where there is any good reason to allow such a Defendant leave the shores of this country on medical tourism, he/she shall so be given unfettered access. This is in view of the fact that only the living can stand trial.

I have seen a medical referral dated the 14th July, 2021 on the Applicant from the renowned UsmanDanfodio University Teaching Hospital, Sokoto, addressed to the Consultant Neurosurgeon, George Washington University Hospital, Washington DC

In the said letter, it was stated that the 2nd Defendant/Applicant who has been under the care of the surgeon, developed a persistent lower back pain one year ago, which is gradually increasing and radiating to the left lower limb which now

limits the normal activity of the Applicant. In view of the poor response to conservative management, Applicant was referred to the surgeon for further evolution and possible lapatospic surgical intervention which the hospital said was not available in their facility.

It is on record that 2nd Defendant/Applicant applied for the release of his expired international passport to enable him renew and apply for US Visa and upon release of same and subsequent renewal and visa – application, he returned the said passport to the Registrar of the court.

Thegamut of Complainant/Respondent's counter affidavit in opposition to the present application is anchored on the fact that 2nd Defendant may

escape from the country and not stand for his trial...

Applicant who had in his possession his International Passport with US Visa clearly had the opportunity to escape from this country at his disposal but returned the said International Passport after renewal and applying for US Visa.

What is more...

Applicant who had been obliged similar opportunity by the Federal High Court to travel on medical tourism was deprived the opportunity by the DSS who could not release him on bail then. It is also on record that Complainant/Respondent did not appeal the ruling of the Federal High Court in that regard

Bail is constitutional in nature. Once granted and conditions fulfilled, it is only fair and just that such a Defendant is allowed to enjoy such, especially where there exist no evidence that such a Defendant will jump Bail and escape justice.

I am more than satisfied that Applicant has placed before this court cogent reasons for a favourable exercise of the court's discretionary power in his favour.

Accordingly, the said application dated the 22nd July, 2021 succeeds and is hereby granted.

It is hereby ordered as follows:-

1. That an Order is hereby made for an Interim release of the Applicant's International Passport, in order to enable 2nd Defendant

travel abroad to the Registrar of this court with 72 hours.

2. That the surety of the 2nd Defendant/Applicant shall file a written undertaking to guarantee his return to Nigeria, the surety accepts to take the place of the 2nd Defendant and to be detained in prison until the 2nd Defendant/Applicant submits himself for trial.
3. That in the alternative, any of the solicitors for the 2nd Defendant/Applicant who is Silk, to give a written undertaking to produce 2nd Defendant/Applicant in court at the next trial date.

Justice Y. Halilu
Hon. Judge
28th June, 2022

APPEARANCE

O.D Mese, Esq. - for the Prosecution/Respondent.

M.D Ayodele, Esq. – for the 1st Defendant.

Oluwafemi Davis – Awe, Esq. with Adejumoke A., Esq. – for the 2nd Defendant/Applicant.

Chrisimdi M. Chuma, Esq. – for the 3rd and 4th Defendants.

P.A Abah, Esq. with C.E Ebelegwu, Esq. – for 5th Defendant.