

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT GUDU – ABUJA
DELIVERED ON TUESDAY THE 17TH DAY OF MAY, 2022.
BEFORE HIS LORDSHIP; HON. JUSTICE MODUPE OSHO-ADEBIYI

SUIT NO. CR/332/2017

MOTION NO: FCT/HC/ M/3583/2022

COMMISSIONER OF POLICE----- COMPLAINANT/RESPONDENT
AND
HABIBU HASSAN ----- DEFENDANT/APPLICANT

RULING

This ruling concerns a bail application vide Motion Number M/4999/2022 filed by the Defendant. The Defendant has been arraigned on a three (3) count charge of conspiracy to commit Armed Robbery, Armed Robbery and unlawful possession of two live cartridge ammunitions punishable under S. 6 (b), S.1(2) (a) and 27 (1) (b) (ii) all of the Robbery and Firearm (Special Provision) Act LFN 2004. He pleaded not guilty to the charge.

In the motion for bail pursuant to Section 158 and 162 of the Administration of Criminal Justice Act 2015, Section 35 (4) and 36, (5) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), the Applicant is praying for the following;

1. An order of this Honourable Court granting bail to the Defendant/Applicant pending the determination of this suit.
2. An order of this Honourable Court granting accelerated trial in this suit.
3. And for such further order(s) as this Honourable Court may deem fit to make in the circumstances of this application.

Learned counsel to the Applicant, in moving the application referred the court to the 15-paragraphs supporting affidavit deposed to by Oluwaseyi Arowosebe, Legal Associate at Citizens' Gavel Foundation for Social Justice Defendant/Applicant's Counsel. The deponent averred that he was arrested at Kuje in August 2017. That he was arraigned on a three count charge bothering on armed robbery on 20/03/2018 and has been in Prison custody since his said arraignment. That Citizens Gavel provided legal representation to the Defendant while he was being tried before the now retired Hon Justice Vera Venda of the High Court of the FCT, sitting in Maitama, Abuja. That as a result of the retirement the case was re-assigned to the court of Hon Justice Peter Affenand pursuant to the elevation of the Hon Justice Peter Affen to the Court of Appeal, the case again was returned to the office of the Chief Judge for re-assignment. That pursuant to their application and follow up, case was re-assigned to this Honourable Court for trial. That the Defendant has been wasting away in prison, having spent more than 4 years in custody. That the Applicant will not jump bail and shall promptly attend this Honourable Court to defend himself against the charge preferred by the prosecution.

The Applicant, if granted bail shall not prejudice investigation of the allegations contained in the charge sheet as such investigations are deemed completed by reason of the charge. That the Applicant, if released on bail, will not commit any offence and is ready and willing to provide credible surety and meet other conditions as may be liberally directed by this Honourable Court. That the Applicant is a law abiding citizen of the Federal Republic of Nigeria with no criminal record.

Annexed to the motion is a written address. Leaned counsel in the written address raised a sole issue for determination to wit; "whether the Defendant/Applicant is entitled to bail and accelerated trial in the circumstances".

Learned counsel submitted summarily that bail is a basic right of every citizen of this country who is charged with a criminal offence by virtue of **Section 35(1) of 1999 Constitution of the Federal Republic of Nigeria** and that the Courts have also upheld the presumption of innocence until proven guilty as guaranteed by **Section 36(5) of the 1999 Constitution**. And that the onus is on the prosecution to prove that the

Applicant is not entitled to bail. Counsel submitted that the Honourable Court has discretion to grant bail which discretion must be exercised judicially and judiciously. Counsel submitted that although the Defendant/Applicant is charged with the offence of Armed Robbery, however, **Section 158 and 161 (2) (c) of the Administration of Criminal Justice Act 2015** enjoins this Honourable Court to grant bail to the Defendant/Applicant. Counsel also submitted that the Applicant is required by law to place some form of materials before the court for consideration while but that the onus placed on him is however not the ultimate one. It is not one beyond reasonable doubt but on the balance of probabilities. Counsel further submitted that once he has done that, the onus shifts to the prosecution to show why bail should not be granted. That the onus is a higher one. It is beyond reasonable doubt. Counsel submitted that the Right of Counsel for legal advice in the conduct of the defence of the Defendant/Applicant is of such a fundamental nature hence the constitutional guarantee provided for it by **Section 36 (6)(b) and (c) of the 1999 Constitution**. Counsel urged the court to uphold the Defendant/Applicant's arguments in this Address and to grant the reliefs sought in this application. Counsel relied on the following authorities amongst other;

1. **EYU VS. THE STATE (1988) 2 NWLR PT 78, at PAGE 206**
2. **ALAYA VS. STATE (2007) 16 NWLR PT 1061 PAGE 487**
3. **OKODUWA VS. THE STATE 1988 2 NWLR PT. 76 AT PAGE 333**

The learned prosecuting counsel, in reply filled an 11-paragraph counter affidavit deposed by David Emezie, litigation officer in the office of the Director of Public Prosecutions of the Federation. The deponent averred that the defendant/applicant is standing trial on a three count armed robbery charge before this Honourable Court. That the defendant/applicant is currently in the custody at the Correctional Centre on the Order of this Honourable Court. That there is likelihood that the defendant may not surrender himself for trial if granted bail. That the alleged offences border on National security. That granting the defendant/applicant bail will jeopardize the proper trial of this case. That the defendant/applicant's application is capable of delaying

the proceedings in this case. That the grant of this application will be prejudicial to the cause of justice. And annexed is a written address wherein raised a sole issue for determination to wit; "Whether the Defendant/Applicant, is entitled to be admitted to bail by this Honourable Court".

Summarily, learned counsel submitted that bail is purely at the discretion of the Court and that the Court of Appeal in the case of **BULAMA V FRN (2004) 12 NWLR (pt. 888) 498** decided that such discretion must, however be exercised judicially and judiciously. Counsel submitted that by the very nature of the offence and the gravity of punishment the Defendant /Applicant will devise all avenues to jump bail and escape justice if granted bail by this Honourable Court again. Counsel further submitted that the offence of armed robbery and possession of ammunitions is no doubt offences that threatens national security and that releasing him on bail threatens the peace and tranquility of the country. In conclusion, prosecution undertakes to pursue a diligent prosecution, to assist the court in the expeditious trial of the Defendant /Applicant and in the dispensation of justice and urged the court to consequently dismiss this application for lack of merit. Counsel relied on the following authorities amongst other;

1. **BOLAKALE V. STATE (2006) 7 NWLR (pt. 962) 507,**
2. **Asari-Dokubo V FRN (2009) 4 NCC 158**
3. **Abacha V State (2003) 3 ACLR 1 at 18**

I have listened and considered this application in the light of the affidavit evidence and the provisions of **Sections 161 and 158 of the Administration of Criminal Justice Act 2015**. I have also adverted to the case law authorities cited by the learned counsel to the applicant. The offence of Armed Robbery Alleged against this applicant is a non-ailable offence. Bail can only be extended to the applicant upon the discretion of the court acting judicially and judiciously. By the provisions of **S.158 and S.161 of the Administration of Criminal Justice Act 2015**, bail can only be granted upon satisfaction of some conditions to wit:

1. That the applicant will not likely jump bail.
2. That the applicant will not likely tamper with police investigation.
3. That there is no likelihood of the applicant committing (further or other offences.

The provision of S.161 (1) of ACJA introduced another fact as condition of “exceptional circumstance”. Ordinarily, bail is not granted in a capital offence punishable with death except the Defendant/Applicant is able to prove exceptional circumstances, which would sway the Court to the granting of bail in his favour. Such exceptional circumstances are listed in **Section 161 (1) and (2) of the Administration of Criminal Justice Act, 2015** which provides:

- (1) A suspect arrested detained or charged with an offence punishable with death shall only be admitted to bail by a Judge of High Court, under exceptional circumstances.*
- (2) For the purpose of exercise of discretion in subsection (1) of this section, “exceptional circumstance” includes:*
 - (a) ill health of the applicant which shall be confirmed and certified by a qualified medical practitioner employed in a government hospital provided that the suspect is able to prove that there are no medical facilities to take care of his illness by the authority detaining him.*
 - (b) Extraordinary delay in the investigation, arraignment and prosecution for a period exceeding one year; or*
 - (c) Any other circumstances that the Judge may in the particular facts of the case, consider exceptional.*

From the affidavit evidence of the Defendant /Applicant supported by the written address of the Counsel to the Defendant, the exceptional circumstance tabled before this Court is that the Defendant has been in the correctional center for more than four (4) years. Based upon the available manifested facts, what should the court do now? Like I said before the provision of **ACJA vide S.161(1)** provides for bail to be granted upon exceptional circumstance. Does the present condition of this applicant qualify as one? My answer is in the affirmative. The compelling consideration for the exercise of this discretion lies with and within the peculiar facts of the individual circumstances made out as exceptional. I am fortified in my believe on the provision of **Section 161 (1) (2) (c) of the Administration of Criminal Justice Act, 2015** which provides: -

(c) Any other circumstances that the Judge may in the particular facts of the case, consider exceptional.

I have equally perused the affidavit evidence of the Defendant/Applicant at paragraphs 8, 9 and 11 of the supporting affidavit, the Defendant/Applicant deposed that he would produce reasonable sureties; that he would not jump bail if granted and that he would make himself available for trial. The depositions at paragraphs 8, 9 and 11 of the supporting affidavit are the materials or facts to be considered by a Court in determining whether to grant or refused bail. From the antecedent of this case, the charge was filed November, 2017 and the defendant has been in detention for more than 4 years. In the circumstances and facts of this case, I will exercise my discretion and grant bail to the Defendant/Applicant. The Defendant/Applicant is hereby admitted to bail on the following terms:-

1. The Applicant is admitted to bail in the sum of ₦5,000,000.00 (Five Million Naira) and two sureties each in the same amount who are to depose to an affidavit of means.
2. That one of the sureties shall deposit title documents to his property within the Federal Capital Territory and same to be verified by the prosecution and Registrar of this Court.
3. That the sureties shall be Civil Servants employed in the Federal Capital Territory on grade level 12 and above, with a verifiable office and house address within the Federal Capital Territory and verification is to be carried out by the prosecution and Registrar of this Honourable Court.

Parties: Defendant present

Appearances: E.T.C. Emezina appearing for the prosecution. James Hope appearing for the Defendant.

**HON. JUSTICE M. OSHO-ADEBIYI
JUDGE**

17TH MAY, 2022

