

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT JABI

THIS 17TH MAY, 2022

BEFORE HIS LORDSHIP: HON. JUSTICE A.A FASHOLA

SUIT NO: FCT/HC/CR/036/2022

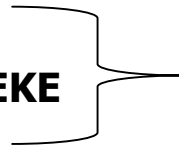
BETWEEN:

FEDERAL REPUBLIC OF NIGERIA-----COMPLAINANT

AND

1. ADAMU YUSUF

2. ELOM CHRISTAIN ALEKE



-----DEFENDANTS

RULING

The ruling before this honourable court pertains to two Motions on Notice the 1st is dated and filed on 4th April 2022 by the counsel to the 1st defendant/applicant herein. The motion was brought pursuant to section 36 (5) 1999 Constitution of the Federal Republic of Nigeria, section 341 (2) of the Criminal Procedure Act and section 158 of Administration of Criminal Justice Act 2015 and under the inherent jurisdiction of this court, the 1st defendant is praying this honourable court for the following relief:

1. And order of this honourable court admitting the 1st defendant/applicant to bail pending the hearing and determination of this case.
2. And for such further order(s) as this honourable court may deem fit to make in the circumstance of this case.

In Support of the Motion on Notice is a 24 paragraph affidavit deposed to by Adamu Yusuf, the 1st defendant in this suit who is a staff of the FCT high court attached to the chief magistrate court sitting at life camp, Abuja.

The 1st defendant avers that he was engaged by the 2nd defendant in this suit to serve an affidavit of fact wherein the 2nd defendant was the deponent at zenith bank plc Gana street Maitama Abuja. That the 2nd defendant introduced him to two persons whom he referred to as his clients named Yahaya Gobir and Abubakar Yola. That the 2nd defendant asked him to give his phone number to his clients for easy communication. That I served the affidavit on zenith bank and was given the sum of N3000.00. That they will also pay me for the second service. That on 6th January 2021 Mr. Abubakar yola called him to inquire if the lawyer has called him about the service of the second process, he told him that the service of the second process will be done the following day and that he should wear a suit. That on 7th January 2021 he met with Yahaya Gobir and Abubakar Yola at Utako, Abuja and they took him to first bank plc at central business district to deliver a sealed envelope to one Jacinta. That Abubakar Yola informed him that their Oga at EFCC directed him, but none of the EFCC dispatch staff were available and that he is too big for that. That Jacinta asked him for the acknowledged copy of the letter he served, he informed

her that he is not aware of such and that the person that sent him is outside the bank. That he met with a staff of EFCC in the bank whom confirmed that the letter is fake. That he called Abubakar Yola to lure him into the bank, but he immediately switched of his phone and since then his phone has been off. That he was able to trace Yahaya Gobir and he was arrested by the EFCC. That he was granted administrative bail by the EFCC and has never jumped bail.

Learned counsel to the 1st defendant in his written address in support of the bail application formulated a lone issue for determination to wit:

Whether this honourable court can grant the 1st defendant bail?

On the lone issue for determination, learned counsel contended that the offence for which the defendant is charged with is bailable in law, that the 1st defendant is just a victim of the fraudulent acts of the defendant and his clients. He cited the case of **ANAJEMA V FEDERAL REPUBLIC OF NIGERIA (2004) 13 NWLR (PT 890) 267 AT 269** to the effect that:

“by judicial interpretation of the provisions of section 341 (2) and 342 of the criminal procedure code, when a court is considering whether to release an application on bail pending trial, the following are paramount , viz

- a. The nature of the charge.
- b. The evidence by which it is supported.
- c. The sentence which by law may be passed in the event of a conviction.
- d. The probability that the accused will appear to take his trial.

Learned counsel submitted that the conditions for the grant of bail are provided for in section 341 (2) and 342 of the Criminal Procedure Code, he relied on the case of **SHAGARI V COMMISSIONER OF POLICE (2007) 5 NWLR (PT 1027) 272** amongst others to the effect that "courts are always enjoined to approach the question of bail liberally" Learned counsel argued while relying on the case of **OLAYIWOLA V COMMISSIONER OF POLICE (2006) 2 NWLR (PT 967) 427 at 430 Ratio 1** to the effect that to grant bail to an applicant is entirely at the discretion of the court hearing a bail application and the court should have regards to the materials placed before it in the affidavit in support of the application. However such discretion must be exercised judicially and judiciously.

Learned counsel to the 2nd defendant equally filed a Motion on Notice dated and filed on 10th March 2022, brought pursuant to section 158, 161 and 162 of Administration of Criminal Justice

Act 2015, section 36 (5) 1999 Constitution Federal Republic of Nigeria and under the inherent jurisdiction of this honourable court, the 2nd defendant is praying this honourable court for the following relief:

1. An order of this honourable court admitting the 2nd defendant/applicant bail in very liberal terms and conditions to enable the 2nd defendant/applicant perfects his bail condition pending the final determination of the substantive case.
2. And for such further complainant order or orders as this honourable court may deem fit to make in the circumstance of this case.

In support of the motion on notice is a 6 paragraph affidavit deposed to by one Angela Onah, a litigation secretary in the law firm of the 2nd defendants counsel. The 2nd defendant avers that he is a lawyer by profession. That he was first arrested for five days by the respondents sometimes in 2021, and upon his release on 19th August 2021, he filed a substantive fundamental rights application against the respondents for unlawful detention. That he was rearrested on 20th January 2022 by the respondents and has been detained at EFCC office in Jabi since then. That the EFCC told him to produce two serving directors who must have landed properties in Abuja before he would be released, due to the suffocating bail

condition he was not able to perfect his bail condition. That he applied through his lawyer for the bail condition to be varied or reduced to civil servants of grade level 12 and 9 respectively. That the EFCC ignored the application for variation, and he has been in custody of EFCC from 20th January till date. Annexed to the affidavit is Exhibit A which is an application for Bail Variation dated the 8th March 2022.

Learned counsel to the 2nd defendant in his written address formulated two (2) issues for determination to wit:

- 1. Whether granting this application is purely a discretionary remedy.**
- 2. Whether the 2nd defendant/applicant is indeed entitled to the favorable discretionary power of this honourable court.**

Learned counsel in arguing the issues raised above jointly argued that granting this application is purely a discretionary remedy which depends on the court hearing the application, such application must be exercised judicially and judiciously. He cited section 36(5) 1999 Constitution and the case of **ANAEKWE V COP (1996) 3 NWLR PART 346 PAGE 320**, to the effect that a person is innocent until proven guilty. Unless the right to bail before trial is preserved, the presumption of innocence secured after centuries of struggle

would lose its meaning. Counsel relied on the case of **IKHAZUAGBE V C.O.P (2004) 7 NWLR (PT 872) pg 346 at 349** to the effect that bail is at the discretion of the court and such should be exercised judicially and judiciously.

While the prosecution counsel did not oppose the application for bail of the 1st defendant, he opposed the application of the 2nd defendant on the grounds that from the record of his case file, he did not report to the commission as of the date given to him. The learned prosecution 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 in granting bail include 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*

Upon a careful perusal of the applications before this court vis a vis the charge for which the defendants/applicants were 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 did

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 grant of the bail application herein, besides the offence for which the defendants/applicants are standing trial is aailable offence. See the case of **BAMAIYI V STATE (2001) 4 SCNJ ABACHI V STATE (2002) FWLR (PT. 98) 863**

The 2 defendants are admitted to bail in the sum of 2,000,000 naira each with one responsible surety in the like sum, surety to work with a reputable organization within the Federal Capital Territory.

Appearances

Defendants are absent

Bamidele Akomode for the prosecution

Benson Ibezim for the 1st Defendant

G.T Iorver for the 2nd Defendant

Ruling read in open court, Case is adjourned to 30th June 2022 for trial.

Signed
Presiding Hon Judge
17th/05/2022