

IN THE HIGH COURT OF JUSTICE OF THE F.C.T.
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT APO, ABUJA
ON WEDNESDAY, THE 06TH DAY OF JULY, 2022
BEFORE HIS LORDSHIP: HON. JUSTICE ABUBAKAR HUSSAINI MUSA
JUDGE

CHARGE NO: FCT/HC/CR/136/2022
MOTION NO.: M/8060/2022

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA

COMPLAINANT/RESPONDENT

AND

VITALIS MBEYI

DEFENDANT/APPLICANT

RULING

This Ruling is in respect of an application for bail brought by the Defendant/Applicant.

The Defendant is standing trial on a three-count charge bordering on forgery and misleading of a public officer contrary to the provisions of section 364 of the Penal Code Act, Laws of the Federal Capital Territory, Abuja and sections 25(a) and (b) of the Corrupt Practices and other Related Offences Act, 2000.

Upon his arraignment on the 21st of June, 2022 and his plea of not guilty, the case was adjourned to the 5th of July, 2022 for the hearing of the bail application. On the 5th of July, 2022, learned Counsel for the Defendant/Applicant moved the said application for bail.

The application, brought by way of Motion on Notice dated and filed on the 17th of June, 2022 with Motion Number M/8060/2022, prays this Honourable Court for the following reliefs:

- 1. An Order of this Honourable Court granting the Defendant/Applicant to pending the hearing and determination of this case.*
- 2. And for further or other Orders as this Honourable Court may deem necessary to make in the circumstances.*

The application is supported by a 5-paragraph affidavit deposed to by one Kate Enadeghe (Mrs) a Litigation Secretary in the law firm of Ibolo & Associates, Counsel to the Defendant/Applicant. A Written Address also accompanies the said application.

In the affidavit in support of the application, the deponent averred that the Defendant/Applicant is a married man and a member of the staff of the Federal Capital Territory Authority Secondary Education Board attached to the Government Model Secondary School, Jikwoyi, Abuja. She swore that the Defendant/Applicant was brought to Court upon the petition of one Mr Sam George Oparah who himself had an interest in the property which forms the basis of the charge and who had boasted that he would use his influence at the Independent Corrupt Practices and Other Offences Commission to deal with the Defendant/Applicant.

The deponent further stated that the Defendant, as a responsible family man, will not interfere with the investigation, will attend his trial, will not abscond when granted bail and will abide by the terms of the bail.

In the Written Address, learned Counsel formulated one issue for determination, to wit: *“Whether the Defendant/Applicant has satisfied the conditions and requirements of the law and on the authorities for the grant of bail.”*

Submitting on this sole issue, learned Counsel, citing the cases of ***Chedi v. AGF (2006) 13 NWLR (Pt. 997) 308 at 322 para E, Ojo v. FRN (2006) 9 NWLR (Pt. 084) 103 at 115 paras E-F, Emmanuel Chinemelu v. Commissioner of Police (1995) 4 NWLR (Pt. 390) 467*** among other cases, reiterated the time-honoured principles guiding the grant of an application for bail. He further submitted that the Defendant/Applicant is entitled to bail considering that the right to bail is constitutionally provided for as a constituent of the right to personal liberty and the presumption of innocence enshrined in sections 35 and 36(5) of the Constitution of the Federal Republic of Nigeria, 1999.

Citing sections 158 and 162 of the Administration of Criminal Justice Act, 2015, Counsel asserted that the Defendant/Applicant has, by his affidavit, deposed to facts which satisfy the requirement of the Act as enumerated in

section 162. He therefore urged this Court to grant the reliefs as sought and admit the Defendant/Applicant to bail on very liberal terms.

The above were the argument canvassed by the Defendant/Applicant through his Counsel in Court. The Complainant did not file any Counter-Affidavit to the application for bail. He did not also oppose the application when it was moved in Court. This Ruling is therefore, on the unchallenged application of the Defendant/Applicant.

In determining this application, this Honourable Court hereby formulates the following issue, to wit: “***Whether, upon a careful consideration of the circumstances of this case, the Defendant/Applicant has not placed sufficient material particulars to be entitled bail?***”

By way of prefatory remarks, I must state that the position of the law and as established in a line of judicial authorities is that the Prosecution has the bounden duty to lead evidence on why a Defendant who applies for bail should not be granted bail. See ***Rajab & Anor v State (2010) LPELR-5001 (CA) at pp. 32 – 33, para D – D, Okomoda v. FRN & Ors (2016) LPELR-40191 (CA) at 19 para B, and Umar v. State (2017) LPELR-43144 (CA) at p. 15, paras B – D.*** In the case of this application, since the Prosecution neither filed any Counter-Affidavit challenging the averments in the affidavit in support of the application nor raised any objection on point of law orally when the application was moved, it is deemed for the purpose of the application to

have accepted the facts as stated by the Defendant/Applicant. In ***Ayorinde v. Kuforiji (2022) LPELR-56600(SC)***, the apex Court per Mary Ukaego Peter-Odili JSC held at ***page 87, paras D – E*** of the report that ***“Facts in a recital if not challenged and effectively rebutted are conclusive proof of what it states.”***

Yet, whether the application is challenged or not, the application is well within the discretionary powers of the Court to either grant or refuse. In other words, it is not the case that an unchallenged application for bail will be granted as a matter of course. In ***Adole v. FRN (2022) LPELR-56934(CA)***, M. S. Hassan JCA delivering the lead Ruling of the Court of Appeal held at ***pages 9 – 10 paras C – B***that,

“Several lines of judicial authorities had set the criteria for grant or refusal of application for bail as an exercise of discretion by the court. The Supreme Court, Per Akintan, JSC set the criteria in the case of Suleman & Anor v. C.O.P. Plateau State (2008) 2-3 SC (Pt.1) 185 at 196-198 when he held: “It is not in doubt that the decision whether to grant or refuse an application for bail involves exercise of judicial discretion in every case. The word “discretion” when applied to public functionaries, a term which includes judicial officers, is defined in Black Law Dictionary, 6th Edition, 1990, page 466 as meaning: “A power or right

conferred upon them by law of acting in certain circumstances, according to the dictates of their own judgment and conscience, uncontrolled by the judgment or conscience of others. It connotes action taken in light or reason as applied to all parties to action while having regard for what is right and equitable under all circumstances and law.”

As to the factors the Court must consider in the exercise of this discretion, His Lordship pointed out at **pages 10 – 11, paras B – A** that ,

“The criteria to be followed in taking a decision in case of this nature as laid down by our courts include: (i) The nature of the charge; (ii) The strength of the evidence which supports the charge; (iii) The gravity of the punishment in the event of conviction; (iv) The previous criminal record of the defendant, if any; (v) The probability that the defendant may not surrender himself for trial; (vi) The likelihood of the defendant interfering with witness or may suppress any evidence that may incriminate him; (vii) The likelihood of further charge being brought against the defendant; and (viii) The necessity to procure medical or social report pending final disposal of the case. See Bamaiyi v The State (supra), Dokubo-Asari v. Federal Republic of Nigeria (2007) All FWLR (Pt.375) 558; Abacha v. The

State (2002) 5 NWLR (Pt.761) 638 SC, Ani v. The State (2002) 1 NWLR (Pt.747) 217 CA and Ekwenugo v. Federal Republic of Nigeria (2001) 6 NWLR (Pt.708) 9 CA.”

I agree with learned Counsel for the Defendant/Applicant that bail is a constitutional matter as well as a statutory construct. See section 35(4) of the Constitution of the Federal Republic of Nigeria 1999, section 62(2) of the Police Act, 2020, and sections 158 – 188 of the Administration of Criminal Justice Act, 2015.

Having gone through the facts deposed to in the unchallenged affidavit in support of the application as well as the unquestioned legal submissions, and giving due consideration to all the facts and circumstances of this application, it is my considered view, and I so hold, that the Defendant/Applicant has satisfied the requirements necessary for this Honourable Court to exercise its discretion in his favour in respect of his application for bail.

I am further fortified in this conviction by the provisions of sections 162 and 163 of the Administration of Criminal Justice Act, 2015 and the principles enunciated by the Supreme Court in the cases of ***Dokubo-Asari v. FRN (2007) 12 NWLR (Pt. 1048) 320 atpages 343 – 344, paras B – A*** and ***Suleman v .C.O.P., Plateau State (2008) 8 NWLR (Pt. 1089) 298 S.C.*** Accordingly, I hereby admit the Defendant/Applicant to bail on the following terms:

1. The Defendant/Applicant is hereby admitted to bail in the sum of ₦ 5,000,000 (Five Million Naira) only and two sureties in like sum one of which must be a civil servant not below GL 12
2. The surety shall bring photo copy and original of his letter of first appointment and last promotion for sighting
3. While the non-civil servant should be a person of proving integrity and reside within the court jurisdiction with immovable property and the surety shall bring the photo copy as well as the original of the immovable property for sighting
4. The Registrar of this Court is hereby ordered to go and see the office of the surety to ensure that he works there.
5. The sureties shall swear to an affidavit of means.
6. The Defendant/Applicant shall deposit his international passports with the Registrar of this Court.

This is the Ruling of this Court delivered today, the 6th day of July, 2022.

HON. JUSTICE A. H. MUSA
JUDGE
06/07/2022