

**IN THE HIGH COURT OF JUSTICE OF THE F.C.T.**  
**IN THE ABUJA JUDICIAL DIVISION**  
**HOLDEN AT APO, ABUJA**  
**ON THURSDAY, THE 08<sup>TH</sup> DAY OF DECEMBER, 2022**  
**BEFORE HIS LORDSHIP: HON. JUSTICE ABUBAKAR HUSSAINI MUSA**  
**JUDGE**

**CHARGE NO: FCT/HC/CR/382/2021**  
**MOTION NO.: M/1741/2022**

**BETWEEN:**

**COMMISSIONER OF POLICE**

**COMPLAINANT/RESPONDENT**

**AND**

**1. ABBA ALHASSAN**  
**2. ZAYANU IBRAHIM**

**DEFENDANTS/APPLICANTS**

**RULING**

This Ruling is on the application for bail which the Defendants brought.

The Defendants are standing trial for the offences of armed robbery and conspiracy to commit armed robbery contrary to sections 298 and 97 of the Penal Code Act of the Federal Capital Territory, Abuja. The Defendants pleaded not guilty when they were arraigned on the 11<sup>th</sup> of November, 2021. The Prosecution opened its case on the 12<sup>th</sup> of April, 2022 after several adjournments as a result of the absence of the Prosecution Counsel in Court. after the hearing of 12<sup>th</sup> of April 2022, this case came up on the 15<sup>th</sup> of June, 2022, 16<sup>th</sup> of June, 2022, 6<sup>th</sup> of July, 2022, 29<sup>th</sup> of July, 2022, 26<sup>th</sup> of October, 2022, and 22<sup>nd</sup> of November, 2022. On each of these dates, the case could not make any progress because the Prosecution Counsel was not in Court.

On the 23<sup>rd</sup> of November, 2022, learned Counsel for the Defendants brought this application for this Honourable Court to admit the Defendants to bail. The application was brought *vide* a Motion on Notice with Motion Number M/1741/2022 dated and filed on the 15<sup>th</sup> of November, 2022. The Motion on Notice contained one specific prayer and an omnibus relief. Essentially, the application seeks for an Order of this Honourable Court admitting the Defendants/Applicants to bail, pending the determination of the criminal charge against them. The application is supported by an 8-paragraph affidavit and a written address.

In the affidavit which was deposed to by one Christy C. Umoh, a legal practitioner in the law firm of Canice I. Nkpe & Co., the law firm representing the Defendants, the deponent gave a brief history of the facts leading to the arraignment of the Defendants, adding that the Defendants were innocent of the allegations and were confident that they would be discharged and acquitted at the end of the trial. He swore that the Defendants would attend Court if they were granted bail, adding that they would not intimidate witnesses or influence the investigation of this case as investigation had already been concluded. He urged the Court to admit the Defendants to bail, more so, as the Defendants had reasonable people to stand as their sureties and take them on bail.

In the Written Address, learned Counsel formulated the following Issue: “Having regard to the facts and circumstances of this application, can this Honourable Court grant the Applicant’s relief?” In his submission on this Issue, learned Counsel referred this Court to sections 158 and 162 of the Administration of Criminal Justice Act, 2015 which makes provisions for bail and contains circumstances under which a Defendant would not be admitted to bail. He contended that none of the circumstances existed in the case of the Defendants. He invited the Court to take note of the provisions of section 165(1) of the Administration of Criminal Justice Act, 2015 which makes the issue of bail one within the discretion of the Court to grant and section 36(5) of the Constitution of the Federal Republic of Nigeria, 1999 which provides for the presumption of innocence.

Learned Counsel cited and relied on the cases of ***Bulama v. The State (2005) 16 NWLR (Pt. 951) 219 at 240; Abacha v. State (2002) 5 NWLR (Pt. 761) 638; Orji v. FRN (2007) 13 NWLR (Pt. 1050) 55; Eyu v. State (1988) 2 NWLR (Pt. 78) 602; Shagari v. COP (2007) 5 NWLR (Pt. 1027) 272 at 293, paras C – D*** and ***Uwazurike v. A.G. Federation (2008) 10 NWLR (Pt. 1096) 444 at 461, paras B – D***. He pointed out that the Defendants in their affidavit in support of their application have adduced sufficient facts to enable the Court to exercise its discretion in their favour. He therefore urged the Court to admit the Defendants to bail.

The Prosecution did not file any process challenging the application for bail of the Defendants. In determining this application, I shall be adopting, with necessary modifications, the sole Issue which learned Counsel for the Defendants formulated in the Written Address in support of the application, to wit: ***“Whether from the facts and circumstances of this case and the records of this Honourable Court, this Honourable Court cannot exercise its discretion in favour of the Defendants by admitting them to bail?”***

Bail is both a constitutional and a statutory matter. 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. Though bail is not granted to persons standing trial for armed robbery and other offences punishable with life imprisonment as well as murder and other offences punishable with death, the Courts have held that such persons may be granted bail under exceptional circumstances. See ***Dokubo-Asari v. FRN (2007) 12 NWLR (Pt. 1048) 320 at pages 343 – 344, paras B – A; Omisore v. State (2005) 12 NWLR (Pt. 940) 591 CA at 605, paras C – E; Shagari v. C.O.P. (2007) 5 NWLR (Pt. 1027) 272 CA; Okpe v. State (1994) 5 NWLR (Pt. 345) 490 ca at 499, para C; Akano v. F.R.N. (2016) 10 NWLR (Pt. 1519) 17 CA.***

Thus, the grant or refusal to grant bail is something that is within the discretionary powers of the Court. In exercising this discretion, the Court must exercise same judicially and judiciously by addressing its mind to all the facts and circumstances of the case. In ***Lawal v. F.R.N. (2013) 3 NWLR (Pt. 1342) 451 CA at 470, para D***, the Court held that “***Bail pending trial is discretionary, but the discretion ought to be exercised judicially and judiciously.***” The Court went on to hold ***at 471, paras B – C*** that “***A Court has discretion to admit an accused to bail or not. Thus, the Court’s decision whether or not to grant bail is likely to vary from case to case.***” In all cases, the determining factor in an application for bail pending trial is whether the Defendants will avail themselves for trial if they are admitted to bail. See ***Eye v. F.R.N. (2018) 7 NWLR (Pt. 1619) 485 SC at 515, at para B.***

I have stated earlier that this case has been adjourned several times because the Prosecution Counsel was not in Court. Out of the twelve (12) dates this case came up in this Court, the Prosecution Counsel attended Court only three (3) times – on the 11<sup>th</sup> of November, 2021 when the Defendants were arraigned; on the 17<sup>th</sup> of March, 2022 when he informed the Court that his witness was sick; and on the 12<sup>th</sup> of April, 2022 when the Prosecution Witness 1 was taken in examination-in-chief. There is proof in the case file that the Prosecution was served with this Motion on Notice for this application and the accompanying Hearing Notice for the day’s hearing. He neither filed any process in response nor did he attend Court. This Court cannot continue

to wait for him. The Defendants, too, cannot continue to languish behind bars *ad infinitum* until when the Prosecution is ready to prosecute them. To hold otherwise will translate to a negativisation of the presumption of innocence which inures in their favour and which is a component of their inalienable right to fair hearing as protected under section 36(5) of the Constitution of the Federal Republic of Nigeria, 1999.

In view of the foregoing, therefore, I hereby admit the Defendants/Applicants to bail subject to the following conditions:

- 1. The Defendants/Applicants are hereby admitted to bail in the sum of ₦5,000,000.00 (Five Million Naira) only and one surety each in like sum.**
- 2. The sureties shall be reasonable and respectable persons resident within the jurisdiction of this Court.**
- 3. The sureties shall swear to an affidavit of means.**

This is the Ruling of this Court delivered today, the 08<sup>th</sup> day of December, 2022.

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**HON. JUSTICE A. H. MUSA**  
**JUDGE**  
**08/12/2022**