

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

HOLDEN AT JABI

THIS TUESDAY, THE 3RD DAY OF JANUARY, 2023

BEFORE: HON. JUSTICE ABUBAKAR IDRIS KUTIGI – JUDGE

SUIT NO: FCT/HC/CR/42/2022

MOTION NO: M/2884/2022

BETWEEN:

FEDERAL REPUBLIC OF NIGERIACOMPLAINANT/RESPONDENT

AND

DOZIE KENNETHDEFENDANT/APPLICANT

RULING

Let me briefly situate some background facts before delivering the Ruling on the bail application by Applicant. The Defendant was arraigned under a charge dated 27th October, 2022 for the offence of cheating under **Section 320 of the Penal Code** and Punishable under **Section 322** of the same Law.

The case was assigned to my learned brother, Honourable Justice Binta Dogonyaro of Court No 50 where the Defendant pleaded not guilty to the one count charge but the court was unable to take the pending bail application filed by Applicant. The extant bail application was thus filed and taken during the vacation period.

Now to the substance. The application by Applicant for bail is dated 21st December, 2022 and filed same date at the Court's Registry. The grounds of the application are as streamlined on the motion paper. In support is a rather lengthy and verbose 70 paragraphs affidavit with 5 annexures marked as **Exhibits 1-5**.

A written address was filed in support which dealt with the settled principles governing grant of bail. The Applicant equally filed a further affidavit with one

annexure and a Reply on points of law in response to the Counter affidavit of Respondents.

At the hearing, counsel to the Applicant relied on the contents of the affidavits and adopted the submissions in his written addresses in urging the court to grant the application.

In opposition, the Respondent also filed a rather lengthy 36 paragraphs counter-affidavit and a written address which equally dealt with the principles governing grant of bail.

At the hearing, counsel to the Respondent equally relied on the contents of the counter affidavit and adopted the submissions in the written address in urging the court to refuse the application.

I have carefully considered the processes filed on both sides of the aisle together with the oral submissions made by counsel. It is now common ground that the bail regime under the Administration of Justice Act (ACJA) is favourably disposed to the grant of bail especially in respect of offences that are bailable.

Indeed it is not in doubt that the nature of offence the Applicant is charged with in this case entitles him to bail as of right by the provision of **Section 163 ACJA** except circumstances are shown or established why bail should not be granted.

Since the punishment for the offence the Applicant is facing is imprisonment for a term which may extend to 3 years or with fine or with both, it is clear that this is a case that falls within the bail parameters situated under **Section 163 of ACJA** which provides thus:

“In any other circumstance other than those referred to in sections 161 and 162 of this Act, the defendant shall be entitled to bail, unless the court sees reasons to the contrary.”

The complainant who is opposing bail has the bounden duty to furnish court with materials denoting precisely why bail should not be granted in the circumstances. In this case, I have carefully considered the counter-affidavit filed by the complainant. The Counter-affidavit did not however situate facts or materials providing credible basis to support the call for the rejection of the bail application.

What is interesting in this case is that the complainant concede or agree that the Applicant is indeed entitled to bail which explains why they themselves granted him administrative bail vide **Exhibit EFCC 1**.

Indeed in **paragraph 18** of the Counter-affidavit, the case made out is not that of violation of the bail terms but that of failure to “**perfect the bail term granted**”. I note also that in paragraphs 20 and 24 of the same Counter-affidavit, the Respondent stated that the Applicant violated the term of the administrative bail he was granted. In these paragraphs, the complaint was that the Applicant “severally jumped administrative bail.”

I incline to the view that these averments are a contradiction in terms. If Applicant could not meet up with the bail terms, how then could he have repeatedly violated the terms of bail terms he could not perfect. The counter-affidavit in real terms did not conduce to clear facts or provide materials putting the court in a commanding height to hold that the Applicant will not be available to stand his trial.

As alluded to by counsel to the Applicant, by the relevant provisions of the law relied on, the law presumes the Defendant/Applicant innocent until the contrary is proved by the prosecution at plenary hearing. The salutary essence of bail is simply to ensure the presence of the Applicant at the trial of the charge preferred against him.

In this case, there is nothing suggestive of the fact that the Applicant will if granted bail be unavailable to face his trial. There is similarly no question that the Applicant will tamper with investigations in any manner or may interfere with witnesses or suppress the evidence which may be adduced at trial.

The bottom line really is that there is no feature or material that will prevent the court from properly exercising its discretion to grant bail to the Applicant.

I accordingly grant bail to the Defendant/Applicant on the following terms:

- 1. The Applicant is granted bail in the sum of N8 Million with one surety in the like sum.**

- 2. The surety must be a responsible citizen who resides within the jurisdiction of this court.**
- 3. The surety shall be a civil/public servant not below grade level 10**
- 4. The surety shall provide verifiable means of identification as a civil/public servant and his place of abode.**
- 5. The surety shall depose to an affidavit of means.**

With the mandate of the court as a vacation judge ending on 5th January, 2022, this file will be returned to the Honourable the Chief Judge for assignment back to Hon. Justice Binta Dogonyaro of Court No 50 to continue with the hearing of the substantive action.

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Hon. Justice A.I. Kutigi

Appearances:

- 1. Joseph Oche for the Applicant**
- 2. M.M. Gwani for the Respondent**