IN THE HIGH COURT OF JUSTICE
FEDERAL CAPITAL TERRITORY OF NIGERIA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT APO – ABUJA
ON, 26TH DAY OF JANUARY, 2023.
BEFORE HIS LORDSHIP:- HON. JUSTICE A. O. OTALUKA.

CHARGE NO.:-FCT/HC/CR/203/2018
MOTION NO.:-FCT/HC/M/10493/2022

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA:……..COMPLAINANT/ RESPONDENT

AND

1. PHILEMON IBRAHIM GORA:……DEFENDANT/APPLICANT

2. CASHFLOW ABI NETWORK LIMITED
3. G. COMMANDING RESOURCES **:…..DEFENDANTS/ RESPONDENT**

Samuel Ugwuegbulam for the Prosecution.
Chief Solomon Akuma (SAN) with Idom-Ani Ebock, Mercy Douglas for the Defendants.

RULING.

The 1st Defendant/Applicant, by a Motion on Notice dated 7th day of September, 2022 and filed the 12th day of September, 2022, brought this application pursuant to Section 6(6)(a), 35 and 36 of the Constitution of the Federal republic of Nigeria, 1999 (as amended), and Sections 158 and 162 of the Administration of Criminal Justice Act, 2015, praying the Court for the following:

1. An Order of this honourable Court allowing and/or restoring the bail granted the 1st Defendant/Applicant by Honourable Justice V.V.M. Venda on 16th day of May, 2019 in Charge No.CR/203/2018: FRN vs. Philemon

Ibrahim Gora & 2 Ors upon the same terms and conditions.

ALTERNATIVELY.

2. An Order of this honourable Court admitting the 1st Defendant/Applicant to fresh bail pending the trial and determination of this Charge No.CR/203/2018: FRN vs. Philemon Ibrahim Gora & 2 Ors.

ALTERNATIVELY.

3. An Order of this honourable Court, remanding the 1st Defendant/Applicant at Correctional Facility, Kuje, pending the trial and determination of Charge No.CR/203/2018: FRN vs. Philemon Ibrahim Gora & 2 Ors.
4. And for such further order or other orders as this honourable Court may deem fit to make in the circumstances.

In the supporting affidavit deposed to by one Samuel Akanji, the Applicant averred that upon his arraignment in this case, the then trial Judge, Hon. Justice V.V.M. Venda granted his bail application, on 16th May, 2018.

That not long after the arraignment of the Applicant and his release on bail, the then trial Judge, Hon. Justice V.V.M. Venda, retired as a Judge of the FCT High Court, as a result of which the case was transferred to the Court presided by Hon. Justice K.N. Ogbonnaya, on 3rd of August, 2020.

The Applicant averred that he was arrested by the EFCC at Abuja on 6/6/2020, and taken to Lagos where he was detained on the EFCC office as a result of which he could not attend trial on the various dates the matter came up before Justice K.N. Ogbonnaya. He stated that on 22/06/2021, the prosecutor informed the Court that the Applicant refused to appear in

Court, as a result of which a Bench Warrant was issued against the Applicant.

He stated that after obtaining the Bench Warrant, the Investigating Officer, Mr. John Peter, went to Lagos and took the Applicant from the EFCC custody and brought him to Court on 20/9/2021 where the Court made an Order that the Applicant be remanded at EFCC custody where he has been since 6/6/2021 till date.

The Applicant stated that this case was transferred to this Court following his complaint of bias against Justice K.N. Ogbonnaya. He averred that he does not feel safe in the EFCC Custody and would not want to remain there. That he would want to be remanded at the Correctional Facility, Kuje, in the unlikely event that prayers 1 and 2 in the instant Motion on Notice fail.

The Applicant further averred that while in the EFCC custody, he has no access to his office, official files, Phones, information, document, time and facilities to adequately prepare and assemble evidence needed for his defence. Also, that he has limited access to his counsel, and that his health condition is deteriorating on account of his continued incarceration at the EFCC custody.

He stated that he has a medical condition requiring special diet, medication and medical attention and that his wife has been preparing his special diet for him daily and taking same to him at the EFCC custody. That his continued incarceration is taking a toll on his wife and children, as his wife has to balance maintenance of home, tending for the children, looking for means of sustenance, as well as shuttle between home, and the detention facility of the EFCC to take his meals to him.

He averred that his release on bail will afford him opportunity to manage his business well and earn money to be able to liquidate some of the financial transactions that were the basis for the petitions giving rise to this charge.

He stated further, that he has a pending criminal charge at the Lagos High Court, Ikeja Division in Charge No. ID/16808c/2021.

The learned defence counsel, Jonas I. Ahuana, Esq, in his written address in support of the application, raised a sole issue for determination, to wit;

> ***"Whether in the circumstances of this matter, the Applicant has satisfied the requirements for the grant of any of his prayers in this application?"***

Arguing the issue so raised, learned counsel argued that the bail granted the Applicant by Hon. Justice V.V.M. Venda on the 16th day of May, 2019, is a valid and subsisting order of Court which was neither set aside nor revoked by Hon. Justice K.N. Ogbonnaya, and that same is therefore, binding on the parties.

He referred to **Akinfolarin v. Akinola (1994) 4 SCNJ 30 at 40** on the validity and bidingness of Court's order or judgment.

He contended that the Applicant would have been enjoying the bail granted him by the initial Court, but for the falsehood peddled by the prosecutor and investigating officer, who alleged that the Applicant jumped bail.

He posited that the matter having been transferred to this Court, this Court has the discretion either to allow the former bail granted the Applicant to continue, or grant a fresh bail to the Applicant.

He urged the Court to allow the Applicant's former bail to continue as same has not been revoked, neither has the Applicant done anything to justify the revocation of the said bail.

On the alternative prayer for the grant of fresh bail, learned counsel referred to Sections 158 and 162 of the Administration of Criminal Justice Act, **Suleiman v. C.O.P. Plateau State (2008) All FWLR (pt.425)1627 at 1649,** on the criteria to be followed in determining whether to grant or refuse bail.

Placing reliance on **Tanko Mohammed Rajab v. The State (2010) LPELR-5000 (CA),** he submitted that the onus on an applicant for bail, is to place before the Court materials on which the Court can consider on a balance of probabilities, after which the onus shifts to the respondent to adduce reasons beyond reasonable doubt why the applicant should not be admitted to bail.

He contended that in the instant case, the offences are bailable and that the Applicant has placed all the facts before this Court for the grant of his bail as contained in the affidavit in support of this application.

Learned counsel argued that there is nothing shown by the prosecution to establish why the Applicant should not be granted bail.

He urged the Court to grant a fresh bail to the Applicant in the unlikely event the Applicant's former bail is not restored and/or allowed to continue.

Regarding the second alternative prayer that the Applicant be remanded at the Kuje Correctional Facility, learned counsel posited that the Applicant does not feel safe in EFCC custody, and urged the Court to order the remand of the Applicant at the

Correctional Facility, Kuje, should prayers 1 and 2 in this application fail.

The Applicant also filed a Further Affidavit in support of his motion for bail, wherein he averred that sometime in 2012, the EFCC unilaterally froze the bank accounts of his business, thereby trapping the funds and investments of thousands of investors amounting to about Four Billion, Five Hundred Thousand Naira as at then, thus leading to him being unable to meet his obligations to his investors and clients.

He stated that in an effort to get the EFCC to unfreeze his business' bank accounts, he sued EFCC in the Federal High Court, which resulted in a consent judgment being entered by the Court. That in the said consent judgment, it was agreed by the parties that the Applicants therein, would not be arrested, detained or prosecuted over the subject matter of the case, which is the funds of depositors trapped in the accounts of the Defendants herein.

The Applicant averred that the EFCC did not release the funds of the Defendants to enable compliance with the Terms of Settlement/Consent Judgment as a result of which he initiated a garnishee proceedings in the Federal High Court to enforce the consent judgment.

He stated that rather than comply with the said consent judgment, the EFCC arraigned the Defendants before the FCT High Court in the instant Charge No. CR/203/2018, and also in Charge No. FHC/ABJ/CS/77/2018 pending before the Federal High Court, in Abuja, both cases being over the funds trapped in the said business' bank accounts of the Defendants.

In opposition to this bail application, the Complainant/Respondent filed a 45 paragraphs counter

affidavit deposed to by John Peter Iteh, an operative of the EFCC. The Respondent averred to the effect that at different dates in the years spanning from 2016 to 2018, it received various petitions from different Nigerians against the Applicant, alleging that the Applicant obtained from them, various sums, such as N31m, N80m, N2b, N14b and so on, under false pretences. That in the course of investigating these petitions, more than fifty other petitions streamed in from different individuals across the country alleging that the Applicant defrauded them of different sums of money under the guise of trading online for them.

The Respondent averred that in a judgment delivered by the Federal High Court on the 11th day of July, 2013, the Applicant was enjoined to refrain from carrying on the business of wonder bank and portfolio management until he secures the requisite licences; but in disobedience to the said judgment, the Applicant has for over eight years, continued to defraud unsuspecting members of the public under the guise of doing online, investment for them.

The Respondent averred that its investigation into the petitions against the Applicant has so far revealed that the Applicant has obtain over Fourteen Billion Naira from over sixty thousand Nigerians under false pretences. It stated that sequel to the revelations unearthed by investigation, the prosecution filed the instant charge before this Court as well as Charge No. FHC/ABJ/CR/77/18 pending before the Federal High Court, Abuja.

The Respondent further averred that between the time Hon. Justice V.V.M. Venda, before whom this charge was originally pending, retired and the time the matter was re-assigned to Hon. Justice K.N. Ogbonnaya, the Applicant jumped bail and

became incommunicado. That arraignment notice was served on the Applicant's counsel on record, J.S. Agada, but he refused to accept same on the grounds that he did not know the whereabouts of the Applicant and cannot produce him in Court.

That it turned out that while the Applicant was on bail granted him by Hon. Justice V.V.M. Venda, he committed another offence in Lagos, where he in conjunction with others, dishonestly converted to themselves, the sum of N550m belonging to His Royal Highness, Jacob Esan. Thus, while the Applicant was being looked for, unknown to the operatives of the EFCC at Abuja office, he was hiding from the EFCC Lagos office who were looking for him in connection with the said fraudulent conversion of money.

The Respondent averred that the Applicant was eventually arrested by the Lagos Zonal office of the EFCC after a long time and was charged to Court in Charge No. ID/16808c/2021. That it was because of the arrest of the Applicant by the Lagos Zonal office of EFCC that made the production of the Applicant before Hon. Justice Ogbonnaya possible.

The Respondent further averred that the Applicant also jumped bail in the case pending at the Federal High Court, Abuja and thereby frustrated the hearing of the case.

It stated that the Applicant is a recidivist criminal and will commit more offences if admitted to bail by this Court like he did before, and that the Applicant has no regard for the laws of Nigeria and will jump bail and frustrate the hearing of this case like he has done before.

The Respondent averred that it will be in the interest of justice not to grant this application but to order for accelerated hearing of this case.

The Applicant did not file any response to the counter-affidavit of the Respondent.

In his written address in support of the counter affidavit, learned counsel for the Complainant/Respondent, S.A. Ugwuegbulam, Esq. raised a sole issue for determination, to wit;

> ***"Whether the Applicant has placed sufficient materials for the Court to exercise its discretion in his favour."***

Proffering arguments on the issue so raised, learned counsel submitted with reliance on Section 161 of the Administration of Criminal Justice Act, 2015, that where a person is charged for a felony other than a felony punishable with death, the Court may if it thinks fit, admit him to bail.

He posited that since bail is a discretional relief, the Applicant has the onus to place before the Court sufficient materials that will persuade the Court to exercise its discretion in his favour. He referred to **Olatunji v. F.R.N. (2003)3 NWLR (Pt.807) 406 at 426.**

Learned counsel argued that the Applicant has failed to discharge this onus as his affidavit is bare and bereft of any material facts. He referred to **Bamaiyi v. State (2001)8 NWLR (Pt.715)291** on the factors or criteria to be taken into consideration in granting or refusing bail pending trial.

Learned counsel posited that the most important factor the Court considers in an application for bail is the defendant's availability for trial. He contended that the Respondent has deposed to the fact that the Defendant jumped bail previously

granted to him, and thus that there is likelihood that he will toe the same path if admitted to bail again.

He argued that the offence for which the Applicant is facing trial is grave and the punishment thereof severe, and is therefore, enough incentive for the Applicant to jump bail. He referred to **Dokubo-Asari v. F.R.N. (2007)12 NWLR (Pt.1048)320 at 362.**

He urged the Court to hold that the Applicant has not placed sufficient material before this Court to make the Court exercise its discretion in his favour to admit him to bail, and therefore to dismiss the Applicant's application and order for expeditious trial of the case.

Bail pending trial, is a constitutionally guaranteed right to which a defendant is entitled under Section 35(4)(b) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended). The main function or essence of bail, is to ensure the presence of the defendant at the trial. See **Dokubo-Asari v. F.R.N. (2007)LPELR-958(SC).**

An application for bail however, is not granted as a matter of course, even where the offence for which the defendant is standing trial, is a bailable offence.

In a plethora of cases, the criteria for granting bail has been laid down by the Courts. In **Dokubo-Asari v. F.R.N. (supra),** the Supreme Court, per Tobi, JSC, laid down the following as the general criteria for granting bail at the trail Court.

a. The availability of the defendant to stand trial.
b. The nature and gravity of the offence.
c. The likelihood of the defendant committing offence while on bail.
d. The criminal antecedents of the defendant.

e. The likelihood of the defendant interfering with the course of justice.
f. Interference with investigation.

The question to consider in the determination of this application, is: **whether the Court can grant bail to the Applicant in view of the evidence placed before this Court?**

It is a trite position of the law that the onus on an applicant for bail, is to place before the Court, some materials for its consideration in the determination of the application. Once the applicant places some materials before the Court for its consideration, the onus shifts to the prosecution to contradict or controvert the claim of the applicant for bail by showing why the applicant should not be granted bail. See **Ohize v. COP(2014) LPELR-23012(CA).**

In the instant application, the claim of the Applicant for bail is predicated on the grounds that he had previously been granted bail in this matter by the Court where he was first arraigned and that the said bail is still valid and subsisting since same has not been revoked.

It was further asserted by the Applicant that he has a medical condition requiring “special diet, medication and medical attention”, and that his business interests are suffering on account of his continued incarceration, as some people owing him are refusing to pay him on account of his continued incarceration in the custody of the Respondent. It is a misconception of the position of the law for the Applicant’s counsel to maintain that the bail granted to the Applicant at the previous trial is still subsisting after the case was transferred from that Court.

It is a common rule of trial procedure, that when a case is transferred from one Court to another Court, the case starts de novo in the new Court irrespective of the stage the proceedings had reached in the previous Court. It is not mandatory that former bail must continue. Bail is at the discretion of the Court.

When a case starts de novo, the position is usually as if there had been no trial or proceeding in the first instance.

See **Onyemaechi Nwaosu & Ors v. HFP Engineering Nigeria Limited (2014) LPELR-23197(CA).**

The Supreme Court, per Mohammed, JSC, stated the position succinctly in the case of **Abayomi Babatunde v. Pan Atlantic Shipping and Transport Agencies Ltd & Ors (2007) 4 SC (Pt.1) 71,** where it held thus:

> ***"Trial or hearing de novo means trying a matter anew, the same as if it had not been previously rendered. It is a new hearing or a hearing for a second time, contemplating an entire trial in same manner in which the matter was originally heard and a review of previous hearing."***

Accordingly, in relation to the instant case or charge, the bail that was granted to the Applicant previously is no longer of any moment to the trial before this Court which is commencing de novo. Therefore, the relief (1) in this application, to allow or restore the bail granted the 1st Defendant/Applicant on 16th day of May, 2019, is misconceived and the same is accordingly dismissed.

Regarding the 1st alternative prayer (relief (2)); the only material placed before this Court by the Applicant is that he has a medical condition *"requiring special diet, medication and medical attention."* To this end, the Applicant exhibited a Medial

Report, Exhibit PG3, wherein it was stated that the Applicant had *"been managed for Chronic Bronchial Pneumonia."*

One would naturally fathom that pneumonia is not an ailment that requires a special diet to be cured. Instructively, the said Medical Report supports this position as it did not in anywhere state that the Applicant should be placed on a special diet.

Be that as it may, taking the Applicant's "material" for whatever it is worth, the Respondent has proffered some grounds in its affidavit evidence to counter the Applicant's claim for bail. In this regard, the Respondent averred inter alia, in its counter affidavit, that between the time Hon. Justice V.V.M. Venda, who granted the Applicant bail, retired, and when the matter was re-assigned to the penultimate Court, the Applicant jumped bail and became incommunicado and even his counsel refused to accept arraignment notice on his behalf.

Furthermore, the Respondent averred that while the Applicant was on bail, he committed another offence in Lagos, and that when he was eventually arrested, and arraigned before the Federal High Court, where he was equally granted bail, the Applicant also jumped the said bail, thereby frustrating the trial at the Federal High Court.

The above are very grave and material allegations which the Applicant was required to counter in his further affidavit if they were unfounded. But the Applicant never countered the said allegations in his further affidavit which was filed before the counter-affidavit. Instead the Applicant dwelt on the freezing of his account and reneging on a consent Judgment by the EFCC which issues bear no relevance to this bail application.

In the circumstances therefore, I am bound to believe as true, the uncontroverted averments in the Respondent's counter

affidavit, to the effect that the Applicant not only jumped the earlier bails granted him, but also committed further offence while enjoying the said bail and after the consent judgment at Federal High Court. Expectedly, this gravely impacts on the Applicant's instant application for bail.

Going further, in **Musa v. C.O.P, Kaduna State (2014)LPELR-23475(CA),** the Court of Appeal, per Aboki, JCA, held that:

> ***"The Court always has the discretion to refuse an application for bail if it is satisfied that substantial grounds exist for believing that the Applicant will abscond or interfere with witnesses or otherwise obstruct the course of justice if granted bail. The crucial factor is in the existence of a substantial ground that he would do so."***

Flowing from the foregoing judicial authorities, particularly Tobi, JSC bail criteria in **Dokubo Asari v. FRN (supra),** I am of the firm view that given the gravity of the offences and antecedent of the Defendant/Applicant, I am of the strong opinion that there would be a likelihood of the Defendant interfering with the investigation.

All of the fore-going, particularly the material facts placed before this Court by the Respondent, to my mind, constitute grounds to refuse this application for bail.

The Applicant prayed this Court in his 2nd alternative prayer (relief(3)), that he be remanded at the custodial facility of the Nigeria Correctional Service, Kuje, Abuja. I am inclined, in the circumstances, to grant the Applicant's prayer in this regard, as I find no justifiable ground to refuse same.

Reliefs (1) and the alternative (2) are refused.

Relief (3) alternative succeeds and the 1st Defendant/Applicant is ordered to be remanded at the Nigeria Correctional Services' facility, in Kuje, Abuja, pending the trial and determination of Charge No. CR/203/2018. Accelerated hearing ordered.

HON. JUSTICE A. O. OTALUKA
26/1/2023.