

**IN THE HIGH COURT OF JUSTICE OF THE
FEDERAL CAPITAL TERRITORY ABUJA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT JABI - ABUJA**

BEFORE: HON. JUSTICE O. C. AGBAZA

COURT CLERKS: UKONU KALU & GODSPower EBAHOR

COURT NO: 11

SUIT NO: FCT/HC/CV/350/19

BETWEEN:

COMMISSIONER OF POLICE.....APPLICANT

VS

1. NDUBISI KELVIN

2. ROSEMARY UDENYI

3. MOSES AIWAEGBE

4. MOSES DAVID.....DEFENDANTS

RULING

By a Motion on Notice with No. M/8715/19 dated 11/9/2019 and filed on 12/9/2019, brought pursuant to Section 36 (5) and Section 35 of the Constitution of Federal Republic of Nigeria, 1999 (As Amended), Section 158, 161, 162 and 165 of ACJA, 2015 and under the inherent jurisdiction of this Court; The 2nd Applicant, Rosemary Udenyi, charge along with three other Defendants on a two (2) count charge of the offence of Criminal Conspiracy and Robbery, punishable under Section 6 (6) of the Robbery and Firearms (Special Provision) Act, Cap Rule 11 LFN 2004, through her counsel filed this application for bail, subject of this Ruling. The relief sought is;

- (a) An Order of this Honourable Court admitting the 2nd Defendant/Applicant – (Rosemary Udenyi) to bail pending her trial on such terms and conditions as may be imposed by this Hon. Court.
- (b) An Omnibus Prayers.

In support of this application is a 13 Paragraph affidavit deposed to by Iduh A. Udenyi and a Written Address, which counsel adopts as their oral argument.

The process was served on the Prosecuting Counsel on 12/9/2019, but failed to react to the Motion. The implication of this, is that this instant application is unchallenged and uncontroverted.

It is trite that the court can act on the facts as true and correct and act on it, if found credible. See Nigerian Agip Oil Co Ltd Vs Ogini & Ors (2017) LPELR – 42663 (CA); Awotoye JCA Pg 33 – 34 Para B- A.

“The law on my view is settled that where evidence given by a party to any proceedings was not challenged by the opposite party who had the opportunity to do so, it is always open to the court seized to the proceedings to act on the unchallenged evidence before it”.

In the Written Address of the 2nd Defendant/Applicant settled by Edward .O. Okirikpo Esq, only One (1) issue was distilled for determination;

“Whether the 2nd Defendant/Applicant is entitled to the reliefs sought”.

Submits in summary, that by virtue of Section 35 and 26 (5) of the Constitution of Federal Republic of Nigeria, 1999 (As Amended) and judicial authorities cited, that bail is a Constitutional Right of every person, who is presumed innocent until the contrary is proved. Also that in line with Pletoria of Judicial authorities, referring to Bamayi Vs State (2001) 8 NWLR (PT. 715) Pg 291, that the conditions set out for consideration of bail, has been fulfilled by the Applicant as stated on the affidavit in support of this application. That in this instant the Prosecution have failed to show any facts why this court should refuse this application. In all urge the court, to exercise its discretion favourably in granting this application.

Having carefully considered the affidavit evidence, submission of the Applicant counsel, and note that the process was duly served on the Prosecuting counsel, but failed to react to it, this court finds that there is only (1) One issue that calls for determination, which is;

“Whether or not the court can in this instant case, grant the reliefs sought based on the facts before it”.

In the consideration of an application of bail, the primary consideration is the exercise of the court discretion, which must be done judicially and judiciously in line with the principles set out in Pletora of judicial authorities. See Ogbuoma Vs F.R.N (2011) 12 NWLR (PT. 1260) Pg 100 @ 104; Anachebe Vs Ijoema (2014); Dokubo Asari Vs F.R.N (2007) ALL FWLR (PT.374) Para B.

Granted that this guidelines is not exhaustive, the court must consider every details provided by the Applicant in the affidavit in support.

In this instant application, the Applicant has by Paras; 7 (a – E); 8, 9 and 10 (e-f) of the supporting affidavit stated facts that would assuage this court to exercise its discretion in favour of the Applicant, in line with the submission of counsel. Granted that these facts were not challenged, and should be treated as unchallenged and accepted, however, it is law that facts contained in an affidavit not challenged may accepted if they are convincing. See *Zeneca Ltd Vs Jagal Pharm Ltd* (2007) ALL FWLR (PT. 387) Pg 938 @ 950 Para F – G. I have carefully perused the facts contained in the affidavit and note that its calls for the exercise of the court discretion in line with the law and judicial authorities cited, however, by the combined effects of the court's position in the case of *Asari Dokubu Vs State* (Supra) *Emeka Vs Sate* (2005) ALL FWLR (PT. 420) Pg 766, this court is not unmindful of the facts that the Applicant is facing an offence with carries heavy sentence if found guilty, without intending to jeopardize the right of the Applicant over the presumption of innocence prescribed by law, it is the view of this court this application be refusing. In doing so, I would press for accelerated hearing. This application is hereby refused.

HON. JUSTICE O. C. AGBAZA

Presiding Judge

9/12/2019

APPEARANCE:

FIDELIS OGBIBE FOR PROSECUTION

OLUSEGUN OYEWALE FOR THE 2ND DEFENDANT

