

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT GUDU - ABUJA

ON THURSDAY THE 10TH DAY OF DECEMBER 2020.

BEFORE HIS LORDSHIP: HON. JUSTICE MODUPE OSHO-ADEBIYI

SUIT NO. CR/847/2020

MOTION NO: M/11869/2020

COMMISSIONER OF POLICE ----- PROSECUTION

AND

YAKUBU DIKKO-----DEFENDANT/APPLICANT

RULING

The Defendant in this case is charged before this court on a two-count charge bordering on the offences of unlawful sexual intercourse and sexual abuse punishable under the provisions of Section 31(2) and 32(2) of the Child Right Act, Laws of the Federation of Nigeria 2003. The Defendant pleaded not guilty to the charges and was ordered to be remanded in prison custody. Defendants have now filed the instant motion seeking for:

1. An order admitting the Defendants/Applicants to bail pending trial and determination of the suit.
2. And for such further order or orders as this honourable court may deem fit to make in the circumstances.

The grounds upon which the Defendant brought this motion is that the information contained in the charge before this Court does not disclose any cogent grounds, particulars or information to detain, restrain or keep the Defendant/applicant in prison custody and that

the Defendant/Applicant is presumed innocent pending the final determination in this matter as provided under Section 36 of the 1999 Constitution of Federal Republic of Nigeria (as amended).

In support of the application is an affidavit of 10 paragraphs, deposed to by one Musa Usman, the elder brother of the Defendant/Applicant, wherein he stated that the applicant is the bread winner of their family who fends for his mother, a person of good character and has no prior criminal record. That the Defendant will not jump bail, interfere with the police investigation or commit another offence while on bail. The application is further supported by a written address wherein Counsel to the Applicant raised a sole issue which is whether the Defendant is entitled to bail. Counsel relied on Section 158 of the ACJA 2015 and the case of Dokubo-Asari V. FRN (2007) ALL FWLR (Pt.375) 558 and urged the Court to exercise its discretion in applicant's favour.

The complainant who was duly served with the application and represented at the hearing did not file a counter affidavit.

I have perused the affidavit evidence in support of the application for bail and the written address filed by counsel in support of the application. Therefore, the issue for determination in my opinion is;

“Whether the Court can grant the application for bail filed by the Defendant/Applicant before this Honourable Court”.

Bail is a Constitutional right of an accused person and this is in line with the Constitutional provision that relates to presumption of innocence in favour of persons accused of committing an offence. See **Section 36 (5) of the 1999 Constitution (As Amended)**.

It is trite law that the grant or refusal of an application for bail is at the discretion of the Court, which like any other discretion must be exercised judicially and judiciously. See the case of **Alaya V. State (2007) 16 NWLR (pt. 1061) 483** and **Iche v. State (2013) LPELR-22035 (CA)**. Furthermore, the law is settled that in the exercise of the discretion for bail, a Court must take into consideration some facts or conditions which will serve as a guide. The Supreme Court enumerated some of these factors in the case of **Suleiman V. C.O. P Plateau State (2008) 8 NWLR (pt. 1089) 98 at 317 – 318, paragraphs H – C**, where it was held thus:-

“... the criteria to be followed in taking a decision on application for bail as laid down by this Court includes:

i. The nature of the charge

ii. The strength of the evidence which support the charge;

iii. The gravity of the punishment in the event of conviction;

iv. The previous Criminal record of the accused if any;

v. The probability that the accused may not surrender himself for trial

vi. The likelihood of the accused interfering with the witness or may suppress any evidence that may in- criminate him.

vii. The likelihood of further charge being brought against the accused and;

viii. The necessity to procure medical or social report pending final disposal of the case.”

The court in **MUSA V. COP KADUNA STATE (2014) LPELR-23475 (CA)** in P. 26, para E-G Per Aboki JCA held,

“in an application for bail pending trial, the trial Court must consider all the evidence brought before it by the prosecution and the Applicant. This consideration necessarily includes the documents and statements listed

*in the proof of evidence as well as the affidavit evidence
in support.”*

Despite the fact that this Defendant is standing trial for a serious offence, the court still reserves the discretion to admit or not to admit him to bail considering the facts and peculiar circumstances this case. This Court will consider the affidavit in support of the application as well as examine the proof of evidence filed by the prosecution, in order to determine whether or not to grant bail to the Defendant.

Although the Defendant has a right to the constitutional presumption of innocence, the offence the Defendant is being charged with is a serious offence, which punishment is life imprisonment and this should be handled with due diligence, therefore, this Court will not exercise its discretion in his favour having taken into account all the facts and proof of evidence in this case. The affidavit attached to the bail application is nothing short of a shoddy one. Paragraph 3 of the affidavit deposed to the fact that Defendant has been in custody of NDLEA. There is no paragraph of the affidavit that deposed to any convincing fact to warrant the Court to sway its discretion in favour of the Defendant. Consequently, this Court shall not grant bail to the Defendant.

Parties: Defendant absent.

Appearances: John Ijagbemi, Esq., for the Prosecution. No representation for the Defendant.

**HON. JUSTICE MODUPE R. OSHO-ADEBIYI
JUDGE**

10TH DECEMBER 2020