

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

BEFORE HIS LORDSHIP: HON. JUSTICE BABANGIDA HASSAN

CASE NO: FCT/HC/CR/612/2023

BETWEEN:

COMMISSIONER OF POLICE....COMPLAINANT/RESPONDENT

VS

1. NDIDI JOSEPH.....DEFENDANT/APPLICANT

2. JOSEPH OJI.....DEFENDANT/RESPONDENT

RULING

The defendants were arraigned before the court for the offences of Robbery and Firearms (Special Provisions) act particularly sections 6(b) which is punishable under section 1(2) and punishable under section 1(2) (b) of the same Act.

By the motion on notice dated the 30th of November, 2023, which application was filed earlier than the date of the arraignment, the defendants seek for the following reliefs:

1. An order of this Honourable Court granting bail to the defendants/applicants on liberal terms pending the determination of the charge against the defendants/applicants before this Honourable Court.
2. And for such further orders or other orders that this Honourable Court may deem fit to make in the circumstances of this case.

The application is supported by nine paragraphed affidavit and a written address of counsel.

The prosecuting counsel did not file any counter affidavit in opposition to the application.

In the affidavit, the deponent stated that the defendants/applicants were arraigned before this court for armed robbery and kidnapping and therefore bail is granted at the discretion of the court, and such discretion has to be exercised judicially and judiciously. The deponent stated that the defendants have been in custody of the respondent for more than five months without being brought before the court and therefore they are entitled to the exercise of the discretion as they are deemed innocent until proven guilty and denying the 1st defendant bail is punitive and against the letter of his constitution.

It is deposed to the fact that the 1st defendant is desirous of depending the charge against them and is willing to provide a reasonable surety and it will be in the interest of justice to grant this application.

The applicant raised this issue for determination in this application, to wit:

Whether on the strength the affidavit evidence before this Honourable court, the applicant is entitled to the reliefs sought in the instant application?

The counsel submitted that bail is at the discretion of the court which has to be exercised judicially and judiciously and the constitution as made express provisions on the issue of bail and gives conditions upon which the discretion of the court can be invoked in section 35(4) of the same constitution; and in view of the provisions of section 35(4) of the constitution, the applicant is eminently qualified for the discretion to be exercised in their favour, and to order for the granting of the bail.

Thus, the law that governs the granting of bail or otherwise in the FCT, is the Administration of Criminal Justice Act, 2015 and section 161 of the Act provides:

- “(1) A suspect arrested, detained or charged with an offence punishable with death shall only be admitted to bail by a judge of the High Court under exceptional circumstances.**
- (2) For the purpose of exercise of discretion in subsection (1) of the section, “exceptional circumstance” includes:**
- (a) ill health of the applicant which shall be confirmed and certified by a qualified medical practitioner employed in a Government Hospital, provided that the suspect is able to prove that there are no medical facilities to take care of his illness by the authority detaining him.”**

By the provision of sections 1(2) and 1(2) (b) of the Robbery and Firearms (Special Provisions) Act, the punishment, the applicant if found guilty and convicted, is death, and so the applicable law regarding the bail of the applicant is section 161 of the Administration of Criminal Justice Act, 2015.

In the circumstances of this application, the Assistant Controller of Correction, in person of Oforgbu Bessie, wrote a letter to this court informing it that one of the defendants whose name is Ndidi Joseph, in this case has been very ill and their medical team have tried every possible best within their reach but to no avail as the sickness persists and getting worst, and therefore advised that the defendant be considered for bail to get better medical attention.

The offences to which the defendants are charged are not bailable except on the exceptional circumstances as recorded in section 161 of the Administration of Criminal Justice Act, 2015, and now the question is:

Whether by the letter dated 26th August, 2024 from the correctional centre where the 1st defendant is remanded satisfies the exceptional circumstance as prescribed in section 161 (2) (a) of the Administration of Criminal Justice Act, 2015?

The section provides in essence that the illness has to be confirmed and certified by a medical practitioner employed in a Government Hospital, and the Assistant Controller of Corrections is not a medical practitioner. No confirmation was attached to the letter that a medical doctor employed in a Government has certified that the 1st defendant is sick. I therefore, answer the above question in the negative. However, in considering the provision of sections 161(2)(c) of the Administration of Criminal Justice Act, 2015, I consider that the letter of plea from the controller of Corrections can be taken to be an exceptional circumstance the court sees in consideration of the application of this nature.

The 1st defendant is granted bail in the sum of N10,000,000.00 with reasonable surety in the like sum.

The surety must be a civil servant in the service of the Federation who is on grade level 10 and above in the service.

The appointment letter and the subsequent promotion letters, being the photocopies be attached with the bond. The residential and office address be verified by the Registrar of this court, and there should be a confirmation that the verification has been carried out.

Passport photographs of the surety and the 1st defendant be attached with the bail bond.

Hon. Judge
Signed
30/9/2024

Appearances:

Maxwell Ekeke Esq holding the brief of P.A. Inegbonoise Esq for the prosecution.

Ofeiku Asekome Esq appeared for the 1st defendant.

DC-CT: I want a stand down for the defendant to be produced from prison.

CT: The matter is stood down till 12:30pm.

Hon. Judge

Signed

30/9/2024

The court resumes sitting with the same membership. The defendant is in court.

Ofeku Asekome Esq appeared for the 1st defendant.

CT: The matter is adjourned to 11th day of November, 2024 for hearing.

Hon. Judge

Signed

30/9/2024