

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT MAITAMA

BEFORE HIS LORDSHIP: HON. JUSTICE Y. HALILU

COURT CLERKS : JANET O. ODAH & ORS

COURT NUMBER : HIGH COURT NO. 14

CASE NUMBER : SUIT NO: CR/443/2019

DATE: : THURSDAY 30TH NOVEMBER, 2023

BETWEEN:

**FEDERAL REPUBLIC OF NIGERIA } COMPLAINANT
/RESPONDENT**

AND

**1. PETER CHIBUZOR OKEREKE } DEFENDANTS
2. CHIDUBEM JOHN OKEREKE } /APPLICANTS
3. KELECHI OKEREKE }**

RULING

This is a consolidated Ruling based on the two applications filed by the 2nd and 3rd Defendant/Applicants.

The 2nd Defendant/Applicant in his Motion number M/1019/22 filed on 17th October, 2022 brought pursuant to sections 6 (6) (a), (b) & 36 (6) (b) of the Constitution of the Federal Republic of Nigeria 1999 as amended and sections 1 (1) & (2), 173 (2), (b) 266 & 492 (3) of the Administration of Criminal Justice Act, 2015, seeks for the following reliefs;

1. An Order granting leave to the 2nd Defendant/Applicant to embark on a six-week trip to the United States of America for the purpose of orthopedic review and surgical correction of his left ankle foot, as disclosed in

Exhibit “A” already attached to this Application.

2. An Order directing the Chief Registrar or such other appropriate officer of this Honourable Court, for an interim release of the 2nd Defendant/Applicant’s International Passport, to either him or his solicitors in terms of relief 1 above.
3. And for such further Order(s) as this Honourable Court may deem fit to make in the circumstances.

The grounds upon which this application is brought are as follows:

1. The 2nd Defendant/Applicant who currently stands trial on an 8 count charge has been admitted to bail by this Honourable Court.

2. In fulfillment of the bail conditions, the 2nd Defendant/Applicant deposited his International Passport with the Chief Registrar of this Honourable Court.
3. However, on the 31st of October, 2022, the 2nd Defendant had an injury to his left foot and ankle region.
4. He was then examined at the Ignatus Ajuru University of Education Teaching Hospital where an X-ray of his left ankle and foot revealed a detached bony fragment at the base of the 5th proximal metatarsal bone with a dense spiking at the area of Achilles tendon of the calcaneus.

5. That he was thereafter referred to the surgery unit for orthopedic review and possible surgical correction.
6. That a compelling need for the 2nd Defendant/Applicant to embark on this trip for the orthopedic review and possible surgical correction of his left foot and ankle has arisen. Hence, the need for this Application.
7. That it is also important that the 2nd Defendant/Applicant embarks on this trip so that he can be fit to stand trial in this proceeding.
8. That the Leave of this Honourable Court is required for the 2nd Defendant/Applicant to proceed on this 6(six) weeks medical trip.
9. That it is in the interest of justice to grant this Application, particularly because the

Complainant will not be prejudiced by the grant of same.

In support of the application is a 15 Paragraph affidavit deposed to by one Chidubem John Okereke, the 2nd Defendant/Applicant in this suit.

In line with the procedure, a written address was filed wherein sole issue was formulated for determination to wit;

“In Consideration of Exhibit “A”, the deteriorating medical condition of the 2nd Defendant/Applicant and surrounding circumstances which have necessitated the need for the 2nd Defendant/Applicant to embark on a medical trip to the United States of America for the possible surgical correction of his left foot and ankle reason, whether this

Honourable Court ought to grant the reliefs sought in this Application.”

It is the submission of learned counsel, that the primary purpose of filing this application is to ensure that the 2nd Defendant/Applicant is fit to stand trial in this case. In other words, effect will not be given to the administration of criminal justice Act, 2015 if further trial is conducted in this case when the 2nd Defendant/Applicant is very ill and unable to fully prepare for his defence. He cited section 36(6)(b) of the 1999 Constitution (as amended).

Learned counsel submits that to ensure a fair trial, judicial authorities are replete on the need for a Defendant to be fit to stand trial for the offences where with he has been charged. In the circumstance

of this case, there is a compelling need for the 2nd Defendant/Applicant to urgently travel abroad in order to undergo the necessary procedures required for him to be fit enough for his trial. ***FRANCIS VS. FRN (2020) LPELR – 52520 (SC);***

OLATUNJI VS. FRN (2003) 3 NWLR (Pt. 807) 406;

BULAMA VS. FRN (2004) 12 NWLR (Pt. 888) 498 were cited.

Learned counsel further submits, that this Honourable Court by virtue of section 173 (2)(a) and 492 (3) of the Administration of Criminal Justice Act, 2015 is empowered to grant application of this nature.

Learned Counsel submits, that the import of this highlight is intended to meet the justice of each case,

as the occasion demands. The court is humbly urged that the special circumstances necessitating the filing of this Motion on Notice be considered just for the grant of this application. Section 173 (2) of the Administration of Criminal Justice Act, 2015 was cited.

In conclusion, learned counsel submits, that he has placed necessary materials before this court whereupon the court's discretion can be favourably exercised in favour of the 2nd Defendant/Applicant.

Upon service, the Complainant/Respondent filed counter affidavit of 16 paragraphs duly deposed to by one David Emezie, a litigation officer in the office of the Director of public prosecutions, Federal Ministry of Justice, Abuja.

It is the deposition of the Complainant/Respondent that paragraphs 7, 8, 9, 10, 11, 12, 13 and 14 in the

affidavit in support of the 2nd Defendants/Applicant's application are false and directed to mislead the court.

That it is not uncommon for footballers to sustain such injury in the cause of playing football.

Learned Counsel added That there are several hospitals in Rivers State that will adequately cater for the medical need of the 2nd Defendant/Applicant and there will be no need for him to take a trip all the way to the United State of America to treat "severe pains at the left foot and ankle region secondary to trauma to the foot."

That Exhibit "A" merely referred the 2nd Defendant/Applicant to the surgery unit of the hospital for orthopedic review and possible surgical correction.

That the orthopedic review and possible surgical correction can be carried out in any other hospital in Rivers State in Nigeria.

That the medical report did not in any way described the 2nd Defendant/Applicant as ill and unfit to stand trial.

That the 2nd Defendant has had ample time to prepare for his defence and the injury to his leg is not enough to stop him from preparing for his defence.

That the 2nd Defendant/Applicant has since his release on bail from this Court along with the 1st and 2nd Defendant been charged for other criminal offences in the High Court of Lagos State in Charge No: LD/14986C/2021. ***STATE OF LAGOS VS. PETER CHIBUZOR OKEREKE, CHIDUBEM***

***JOHN OKEREKE, KELECHI OKEREKE AND
EVGENE OKOREAFOR*** and the said information
is attached and marked as Exhibit “P”.

That there is great likelihood that the 2nd
Defendant/Applicant will jump bail if his
International Passport is released to him.

That it will not be in the interest of justice to grant
the 2nd Defendant’s/Applicant’s application as
prayed.

In line with procedure, written address was filed
wherein sole issue was formulated for determination
to wit:

**Whether from Exhibit A” attached to the Motion
on Notice, the 2nd Defendant/Applicant is entitled
to be granted the relief sought?**

Learned counsel in his argument refers the court to the 2nd Defendant's/Applicant's Motion on Notice dated 7th November, 2022, praying for the orders to be granted.

Learned counsel submits, that it is often said that it is only the living and healthy that can stand trial, it is ordinarily concede to the importance of good health for a Defendant to stand trial. It is the learned counsel's opinion that this application by the 2nd Defendant/Applicant is another ploy to delay and truncate trial in the above-mentioned charge.

Whether to grant the 2nd Defendant/Applicant the leave to travel to United States of America (USA) and release the 2nd Defendant/Applicant's International Passport for that purpose is within the discretion of the Honourable Court but it behooves

the 2nd Defendant/Applicant to place sufficient materials before the Honourable Court if that discretion has to be exercised in favour of the 2nd Defendant/Applicant.

Learned counsel maintains, that where the 2nd Defendant/Applicant fails to place such sufficient materials before the Honourable Court, then the 2nd Defendant's/Applicant's Motion on Notice should fail. ***GENERAL & AVIATION SERVICES LTD. VS. CAPTAIN PAULL M. THAHAL (2004) L.P.E.L.R 1317 (SC) at 20 – 22 paragraphs E – B; DANGOTE VS. CIVIL SERVICE COMMISSION, PLATEAU STATE (2001) 9 NWLR (Pt. 717) 132 at 161 – 162 were cited.***

Learned counsel submits, that there is no compelling evidence to show that the 2nd Defendant/Applicant

need to get to the United States of America (USA) before he can have an orthopedic review or correctional surgery done. There is no medical report recommending that the 2nd Defendant/Applicant should spend “six weeks” in U.S.A. and there is no record or evidence showing that the 2nd Defendant/Applicant is very ill and needs to attend to his ailing health.

Learned counsel further argued, that the 2nd Defendant's/Applicant's prayers 1 and 2 are both predicated on the alleged need for the 2nd Defendant/Applicant “to embark on a six weeks trip to the United States of America for the purpose of orthopedic review and surgical correction of his left ankle and foot as disclosed in Exhibit “A”, but there is no record or evidence produced to show that the 2nd Defendant/Applicant has been recommended and

approved for such medical treatment by a Medical Doctor or medical facility in United States of America. Exhibit “A” is a general letter from a hospital in Nigeria which merely describes the injury sustained by the 2nd Defendant/Applicant. He cited the case of ***MOHAMMED SANI ABACHA VS. THE STATE (2002) LPELR – 15 (SC)*** particularly at 26 – 27 paragraph F – E.

Learned counsel refers the court to 2nd Defendant’s/Applicant’s formulated issues in paragraph 2.0 at page 8 and submits that there is no such deteriorating medical condition referred to in Exhibit “A”. That Exhibit is merely a referral for further evaluation in the same hospital that he presented.

Learned counsel argues and refers the court to paragraph 12.b in the affidavit in support of the 2nd Defendant's/Applicant's Motion on Notice that since the 2nd Defendant/Applicant's release on bail have not committed any offence whatsoever and have no plans to do so, however since the 2nd Defendant/Applicant's release on bail, the 2nd Defendant/Applicant with the 1st and 3rd Defendants/Applicants have since their released on bail, been charged for other criminal offences in the High Court of Lagos State in charge No. LD/14986C/2021.

Learned counsel in conclusion submits, that based on the facts of this case, the deposition contained in their counter affidavit in opposition to the Motion on Notice of the 2nd Defendant/Applicant, has no merit and does not deserve the court to exercise its

discretion in its favor. The court is urge to refuse and dismiss the application.

The 2nd Defendant/Applicant filed further affidavit in support of Motion on Notice deposed to by Chidubem John Okereke the 2nd Defendant/Applicant in this matter.

That contrary to the depositions in paragraph 6 of the Complainant/Respondent's counter affidavit that:

The 2nd Defendant/Applicant and other Defendants have not done anything whatsoever to frustrate the prosecution of this case as erroneously deposed therein.

That contrary to the deposition in paragraph 7 of the Complainant/Respondent's counter affidavit, paragraphs 7, 8, 9, 10, 11, 12, 13 and 14 of the

affidavit in support of his Motion on Notice are true and not directed to mislead the Honorable Court.

That contrary to paragraphs 9, 10, 11 and 12 of the Complainant/Respondent's counter affidavit, his injury can be best treated in the United States of America.

That contrary to the deposition in paragraph 13 and 14 of the Complainant's/Respondent's counter affidavit, he was examined at the Ignatius Ajuru University of Education Teaching Hospital. Herewith attached and marked as Exhibits "B", "B2" and "B3" respectively are copies of the x-ray result and the x-ray.

That contrary to the depositions in paragraphs 15, 16 and 17 of the Complainant's/Respondent's counter affidavit, he has placed enough material evidence

before this Honorable Court that will warrant the exercise of the court's discretion in his favor.

That in reply to the deposition in paragraph 18 of the Complainant's/Respondent's counter affidavit, the offences as alleged in charge No: LD/14986C/2021 – ***STATE OF LAGOS VS. PETER CHIBUZOR OKEREKE & OTHERS*** are not offences capable of being committed by him or the other Defendants.

That charge No. ***LD/14986C/2021 STATE OF LAGOS VS. PETER CHIBUZOR OKEREKE & ORS.*** Is a gross abuse of court process as the Defendants are charged with similar offences in the instant charge and in charge No. LD/14986C/2021 – ***STATE OF LAGOS VS. PETER CHIBUZOR OKEREKE & ORS.***

That contrary to the deposition in paragraph 19 of the Complainant/Respondent's counter affidavit, he will religiously abide by any terms stipulated by this Honorable Court for the grant of the prayers in this application.

That this Honourable Court has the power to grant the instant application.

That the Respondent will not be prejudiced by the grant of the application.

2nd Defendant/Applicant filed reply on points of law to the Complainant/Respondent's written address dated 9th November, 2022.

It is the contention of learned counsel, that the Complainant's/Respondent's opposition to the grant of the application hinges on the fact that the 2nd Defendant/Applicant has not placed sufficient

material before this Honourable Court for the exercise of the Court's discretion in his favour. It was further contended that the 2nd Defendant/Applicant's Motion on Notice has no merit and does not deserve the exercise of the court's discretion. Counsel submits with respect that the Complainant's contention pales into insignificance and the court is urged to discountenance same.

Learned counsel submits, that the 2nd Defendant/Applicant must be medically fit at all stages of his trial. Having shown that the application is one borne out of a need to be fit for trial, this court is urged most humbly to grant same.

Learned counsel refers the court to paragraph 4:3 – 4.10 of the Complainant written address that the 2nd Defendant/Applicant has not placed sufficient

materials before this Honorable Court for the Court to exercise its discretion in his favor. Counsel submits that this assertion is completely unfounded.

GENERAL & AVIATION SERVICES LTD. VS. CAPTAIN PAUL M. THAHAL (2004) LPELR – 1317 (SC);

FRANCIS VS. F.R.N (2020) LPELR 52520;

NWEKE CHIBUEZE FRANCIS VS. FEDERAL REPUBLIC OF NIGERIA (2021) 5 NWLR 398

were cited by the Complainant in support of his contention, is most inapposite in the circumstance. The Court is urge to discountenance same.

Learned counsel submits in response to paragraph 4:11 of the Complainant's address, that travelling to the United States of America is the best option available to the 2nd Defendant/Applicant.

Counsel submits further, that it is trite law that an affidavit shall not contain extraneous matter, by way of objection, or prayer or legal argument or conclusion. Section 115(2) of the Evidence Act 2011 and the cases of *IZEDONMWEN VS. UBN PLC. (2012) 6 NWLR (Pt. 1295) 1 at 46 Paragraphs G – H;*

SIDIPO VS. LEMMINKAINED OIL (1992) 8 NWLR (Pt. 258) 229 at 244 E were cited.

Counsel submits, that paragraphs 6 and 14 of the Complainant/Respondent's counter affidavit offends the provision of the Evidence Act as same are argumentative and conclusive and the court is urge to so hold and accordingly strike out the said paragraphs of the Complainant/Respondent' counter affidavit.

Learned counsel submits further to the above that Paragraphs 9 and 17 of the Complainant/Respondent's counter affidavit offends the provisions of the Evidence Act, as the David Emezie, the deponent to the affidavit is not a medical expert and cannot depose to facts, the knowledge of which ought to be possessed by medical expert as required by law.

The court is urged to so hold. Learned counsel refers this Honourable Court to the provision of section 68 of the Evidence Act 2011.

In conclusion, the above reasons and the fuller submissions in the Applicant's substantive written address, the court is urged to grant the application.

1. On Motion No M/1020/22 praying the court for an Order granting leave to the 3rd

Defendant/Applicant to embark on a 4 (four) week trip to the united states of America for the purpose of continuing treatment of his ailing medical condition, as disclosed in Exhibit “A”.

2. An Order directing the Chief Registrar or such other appropriate officer of this Honourable Court, for an interim release of the 3rd Defendant/Applicant’s International Passport, to either him or his solicitors, in terms of relief 1 above.
3. And for such further Order(s) as this Honourable Court may deem fit to make in the circumstances.

The grounds upon which this application is brought are as follows:

- a. The 3rd Defendant/Applicant who currently stands trial on an 8 count charge has been admitted bail by this Honourable Court.
- b. In fulfillment of the bail conditions, the 3rd Defendant/Applicant deposited his international passport with the chief Registrar of this Honourable Court.
- c. Prior to the filing of this charge, the 3rd Defendant/Applicant was being evaluated in the United States of America where he was given a follow up appointment for screening of colorectal cancer since 2020.
- d. However, due to the Covid 19 pandemic in 2020 he defaulted the said appointment.
- e. The inability of the 3rd Defendant/Applicant to immediately return to the United States of

America for the said screening of colorectal cancer has foisted a significant deterioration of his health.

- f. A compelling need for the 3rd Defendant/Applicant to complete the process of his medical treatment afore stated has arisen. Hence, the need for this Application.
- g. It is also important that the 3rd Defendant/Applicant embarks on this medical trip so that he can be fit to stand trial in this proceeding.
- h. Leave of this Honourable Court is required for the 3rd Defendant/Applicant to proceed on this four week medical trip.
- i. It is in the interest of justice to grant this Application, particularly because the

complainant will not be prejudiced by the grant of same.

In support of the application is 15 Paragraph affidavit deposed to by one Kelechi Okereke, the 3rd Defendant/Applicant in this suit urging the court to grant this application.

In line with law and procedure, a written address was filed wherein sole issue was formulated for determination to wit;

In consideration of Exhibit “A” the deteriorating medical condition of the 3rd Defendant/Applicant and surrounding circumstances which halted the medical treatment he was undergoing in the United States of America, whether this Honorable Court ought to grant the reliefs sought in this Application.

It is the submission of learned counsel, that the primary purpose of filing this Application is to ensure that the 3rd Defendant/Applicant is fit to stand trial in this case. In other words, effect will not be given to the Administration of Criminal Justice Act, 2015 if further trial is conducted in this case when the 3rd Defendant/Applicant is very ill and unable to fully prepare for his defence. He cited section 36 (6)(b) of the 1999 Constitution (as amended).

Learned counsel submits, that to ensure a fair trial, judicial authorities are replete on the need for an accused person to be fit to stand trial for the offences where with he has been charged. In the circumstances of this case, there is a compelling need for the 3rd Defendant/Applicant to urgently travel abroad in order to undergo the necessary procedures required for him to be fit enough for his

trial. *FRANCIS VS. FRN (2020) L.P.E.L.R – 52520 (SC)*;

OLATUNJI VS. FRN (2003) 3 NWLR (Pt. 807) 406;

BULAMA VS. FRN (2004) 12 NWLR (Pt. 888) 498 was cited.

Learned counsel further submits, that this Honourable Court by virtue of section 173 (2)(a) & 492 (3) of the Administration of Criminal Justice Act 2015 is empowered to grant applications of this nature.

Learned counsel in conclusion submits, that he has placed necessary materials before this court and discretion can be favorably exercised in favor of the 3rd Defendant/Applicant.

Upon service, the Complainant/Respondent filed counter affidavit of 14 paragraphs duly deposed to by David Emezie, a litigation officer in the office of the Director of Public Prosecution Federal Ministry of Justice, Maitama, Abuja.

It is the deposition of the Complainant/Respondent, that the 3rd Defendant/Applicant is charged before this court on an eight count charge of forgery and using as genuine a forged document under section 362 and 366 of the Penal Code Law.

That Defendant has done everything to frustrate the Prosecution of the case. This application is another ploy to delay and eventually truncate trial in this case.

That paragraphs 6, 7, 8, 9, 10, 11, 12, 13 and 14 in the affidavit in support of the 3rd

Defendant/Applicant's application are false and directed to mislead the court.

That there is no record or evidence produced to show that the 3rd Defendant/Applicant was ever under medical treatment in United States of America (U.S.A) before and has been recommended and approved for such medical treatment by a Medical Doctor or Medical Facility in United States of America.

That there is no medical report recommending that the 3rd Defendant/Applicant should spend "four weeks" in USA neither is there any record or evidence of the 3rd Defendant/Applicant's alleged "deteriorating" medical condition.

That there is no evidence in Exhibit "A" or elsewhere showing that such further evaluation or

medical treatment that the 3rd Defendant/Applicant requires cannot be done in Nigeria.

That the 3rd Defendant/Applicant has since release on bail from this Honourable Court along with the 1st and 2nd Defendants been charged for other criminal offences in the High Court of Lagos State in charge *No. LD/14986/2021 – LAGOS STATE VS. PETER CHIBUZOR OKEREKE, CHIDUBEM JOHN OKEREKE, KELECHI OKEREKE and EUGENE OKOREAFOR* and the said information is attached and marked as Exhibit “P”.

That it will not be in the interest of justice to grant the 3rd Defendant’s/Applicant’s relief as prayed.

In line with procedure, written address was filed wherein sole issue was formulated for determination to wit;

Whether from Exhibit “A” attached to the Motion on Notice, the 3rd Defendant/Applicant is entitled to be granted the relief sought?

Learned counsel in his argument refer the court to the 3rd Defendant/Applicant’s Motion on Notice dated 7th November, 2022 praying for orders to be granted.

That, it is often said that it is only the living and healthy that can stand trial, it is ordinarily concede to the importance to good health for a Defendant to stand trial. In this case, it is the learned counsel’s opinion that this application by the 3rd

Defendant/Applicant is another ploy to delay and truncate trial in the above mentioned charge.

Whether to grant the 3rd Defendant/Applicant the leave to travel to United States of America (USA) and release the 3rd Defendant's/Applicant's International Passport for that purpose is within the discretion of the Honourable court but it behoves the 3rd Defendant/Applicant to place sufficient materials before the Honourable Court, if that discretion has to be exercised in favour of the 3rd Defendant/Applicant.

Learned counsel maintains, that where the 3rd Defendant/Applicant fails to place such sufficient materials before the Honourable Court, then the 3rd Defendant's/Applicant's Motion on Notice, should fail. ***GENERAL & AVIATION SERVICES LTD.***

VS. CAPTAIN PAUL M. THAHAL (2004) LPELR 1317 (SC) at 20 – 22 Paragraphs E – B;

DONGOTOE VS. CIVIL SERVICE COMMISSION, PLATEAU STATE (2002) 9 NWLR (Pt. 717) 132 at 161 – 162 were cited.

Learned counsel further argued that the 3rd Defendant's/Applicant's prayers 1 and 2 are both predicated on the alleged need for the 3rd Defendant/Applicant "to embark on four week trip to the United States of America, for the purpose of continuing treatment of his ailing medical condition, as disclosed in Exhibit "A" but there is no record or evidence produced to show that the 3rd Defendant/Applicant was ever under medical treatment in United States of America (USA) before and has been recommended and approved for such

medical treatment by a Medical Doctor or Medical Facility in United States of America. Exhibit “A” is a general letter from a Hospital in Nigeria which merely, refers to the 3rd Defendant’s/Applicant’s Primary Hospital in the U.S.A which is not disclosed at all or anywhere. ***MOHAMMED SANI ABACHA VS. THE STATE (2002) L.P.E.L.R – 15 (SC) at 26 – 27 was cited.***

Learned counsel further argued and refer the court to Exhibit “A” and submits that there is no evidence in Exhibit “A” or elsewhere showing that such further evaluation or medical treatment cannot be done in Nigeria.

Learned counsel argued that there is also no recommendation in Exhibit “A” that the 3rd Defendant/Applicant should be away from Nigeria

for four (4) weeks as sought for in prayer 1 in the Motion on Notice. The said four (4) weeks in prayer 1 is therefore a figment of the 3rd Defendant's/Applicant's imagination or of counsel, and not a medical recommendation.

Learned counsel refers the court to Defendant's/Applicant's formulated issue in paragraph 2.0 at page 8 and submits that there is no such deteriorating medical condition referred to in Exhibit "A". That Exhibit "A" is merely a referral for further evaluation.

Learned counsel concluded, that with all due respect that based on the facts of this case, the deposition contained in his counter affidavit in opposition to the Motion on Notice of the 3rd Defendant/Applicant has no merit and does not reserve the court to exercise

its discretion in its favour. The court is urged to refuse and dismiss the application.

3rd Defendant/Applicant filed further affidavit in support of Motion on Notice deposed to Kelechi Okereke the 3rd Defendant/Applicant in this matter.

That contrary to the depositions in paragraphs 6 of the Complainant/Respondent's counter affidavit that:

That the 3rd Defendant/Applicant and other Defendants have not done anything whatsoever to frustrate the prosecution of this case as erroneously deposed therein.

That contrary to the deposition in paragraph 7 of the Complainant/Respondent's counter affidavit, paragraphs 6, 7, 8, 9, 10, 11, 12, 13 and 14 of the affidavit in support of his Motion on Notice are true and not directed to mislead the Honourable Court.

That contrary to the depositions in paragraphs 8, 9, 10 and 11 of the Complainant/Respondent's counter affidavit, he has placed sufficient material evidence before this Honourable Court that will warrant the exercise of the court's discretion in favour of the grant of the instant application.

That in reply to the deposition in paragraph 12 of the Complainant/Respondent's counter affidavit, the Complainant is Charge No.: LD/14986C/2021 ***STATE OF LAGOS VS. PETER CHIBUZOR & OTHERS*** has not via its proof of evidence established a case against himself and the Defendants listed on the charge.

That charge No. LD/14986C/2021 – ***STATE OF LAGOS VS. PETER CHIBUZOR OKEREKE & ORS.*** Does not disclose a particular time and

specific place in Lagos where the alleged offence was committed contrary to the mandatory requirement of section 36 of the Constitution of the Federal Republic of Nigeria 1999 (as amended).

That Charge No: LD/14986C/2021 – ***STATE OF LAGOS VS. PETER CHIBUZOR OKEREKE & ORS.*** Is a gross abuse of court process filed mainly to irritate, embarrass and annoy the Defendants.

That this Honourable Court has the power to grant the instant Application.

That the Respondent will not be prejudiced by the grant of the application.

That it is in the interest of justice to grant this application.

3rd Defendant/Applicant filed reply on points of law to the Complainant/Respondent's written address dated 8th November, 2022.

It is the contention of learned counsel, that the Complainant's opposition to the grant of the application hinges on the fact that the complainant contended that there is no record or evidence produced to show that the 3rd Defendant/Applicant was ever under medical treatment in United States of America (U.S.A).

That the 3rd Defendant/Applicant Motion on Notice has no merit and does not deserve the exercise of the court's discretion. Learned counsel therefore submits that the Complainant's contention pales into insignificance and the court is urged to discountenance same.

Learned counsel submits, that it is trite law that an affidavit shall not contain extraneous matter, by way of objection, or prayer or legal argument or conclusion. Section 115 (2) of the Evidence Act, 2011 and the case of *IZEDONMWEN VS. UBN PLC. (2012) 6 NWLR (Pt. 1295) 1 at 46 G – H; SODPO VS. LEMMINKAINTNOY (1992) 8 NWLR (Pt. 258) 229 at 244 E* were cited.

Learned counsel submits, that paragraph 6 of the Complainant/Respondent's counter affidavit offend the provision of the Evidence Act as same is argumentative and conclusive and the court is urge to so hold and accordingly strike out the said paragraph of the Complainant/Respondent's counter affidavit.

Counsel in his submission refers the court to paragraph 4.3 – 4.10 of Complainant’s address that the 3rd Defendant/Applicant has not placed sufficient materials before this Honourable Court for the court to exercise. Its discretion in his favour, that this assertion is completely unfounded, this court is urged to humbly discountenance these inconsistencies submissions by the Complainant.

Learned counsel submits, that the cases of ***GENERAL & AVATION SERVICES LTD. VS. CAPTAIN PAUL MTHAHAL (2004) LPELR 1317 (SC)***;

FRANCIS VS. FRN (2020) LPELR – 52520;

NWEKE CHIBUEZE FRANCIS VS. FEDERAL REPUBLIC OF NIGERIA (2021) 5 NWLR 398 cited by the Complainant in support of this

contention is most inapposite in the circumstance.
The court is urged to discountenance same.

Learned counsel further submits, that the need for the Applicant to be medically fit to stand trial is a constitutional yardstick to measuring a fair trial and thus, having shown that there is a real need for the Applicant to continue his treatment, the said deposition cannot be dismissed as mere sentiment or black mail as the Complainant wishes this court to so do. The case of ***MOHAMMED SANIABACHA VS. STATE (2002) LPELR – 15 (SC)*** cited by the Complainant in support of this contention is most inapposite in the circumstance.

Court is urged to discountenance same.

COURT:-

The crucial issues that calls for determination is whether or not the 2nd and 3rd Defendants/Applicants have made – out a case to justify a grant of their application.

It is well - known under any developed and civilized judicial system that the principles of natural justice allows an accused persons to be present at the trial and also provide them the right to defend themselves and a reasonable opportunity to be heard despite the necessity of such a right, courts have been granted the discretion to exempt the personal attendance of the accused under certain circumstances as in the instant case.

It is the objection of the Complainant/Respondent in their respective counter affidavit to the applications

that there are several Hospitals in Nigeria that will adequately cater for the medical needs of the 2nd and 3rd Defendants/Applicants and there will be no need to take a trip all the way to the United State of America and United Arab Emirate respectively.

I have considered the applications ably moved by learned counsel for the 1st, 2nd and 3rd Defendants seeking for leave to enable 2nd and 3rd Defendants travel to the United States of America on medical grounds.

The reasons given, argument of learned counsel is as contained already in the ruling of this court.

Needless to say, that I will not reproduce the same reliefs and same arguments again hook, line and sinker.

I however shall consider the entire arguments to arrive at the right decision.

The law is settled on what an Applicant seeking Bail pending Trial or pending Appeal must do. The conditions are not the same.

Whereas an accused person is ordinarily entitled to Bail pending trial in view of the constitutional provision of presumption of innocence pursuant to section 36(5) of the 1999 Constitution, an accused person who has been tried and convicted does not enjoy such constitutional privilege.

He therefore must give good reasons to sway the court into admitting him to Bail pending the hearing of such an Appeal.

See *BAMAIYI VS. STATE (2007) 8 NWLR (Pt. 715) 270;*

SULEIMAN & ANOR VS. C.O.P PLATEAU STATE (2008) LPELR – 3126 (SC);

ABACHA VS. STATE (2002) 5 NWLR (Pt. 761) 638 at 674.

The instant application is neither of both aforementioned.. It is an application seeking to proceed abroad for medical treatment. I have considered the medical report the said Accused/ Applicants annexed in support of their application. I make bold to say that Applicants who are though entitled to be allowed to access medical facility of their choice within and outside the shores of this country, are under an obligation to show that the ailment/sickness is such that cannot be treated within this country.

Such Applicant must endeavor to attend Government Hospital for such report to be credible. The report annexed in support of the consolidated application/ ruling is from a private hospital.

What more... there is nothing in the said annexed medical report suggesting 2nd and 3rd Defendants cannot be treated within Nigeria and or that their lives are being threatened.

I am not swayed by the reasons anchored on health given by the Accused/Applicants' counsel.

This application has to fail for being unmeritoriously argued.

Same is refused and dismissed.

Justice Y. Halilu
Hon. Judge
30th November, 2023

APPEARANCES

Defendants in court.

K.A Fagbemi, Esq. – for the Prosecution.

D. Amefula, Esq. with O.Y Archibong, Esq. and
T.G. Jacobs, Esq. – for the Defendants.

Nwabu A. Okoye, Esq., I hold the brief – for the
Nominal Complainant