

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**  
**IN THE ABUJA JUDICIAL DIVISION**  
**HOLDEN AT GUDU – ABUJA**  
**DELIVERED ON TUESDAY THE 17<sup>TH</sup> DAY OF MAY, 2022.**  
**BEFORE HIS LORDSHIP; HON. JUSTICE MODUPE OSHO-ADEBIYI**

**SUIT NO. CR/325/2018**

**MOTION NO: FCT/HC/ M/3583/2022**

**COMMISSIONER OF POLICE----- COMPLAINANT/RESPONDENT**  
**AND**  
**FRANCIS EZEKIEL ----- DEFENDANT/APPLICANT**

**RULING**

Defendant/Applicant was arraigned before this Honourable Court on the 13<sup>th</sup> day of April 2022 on a one Count Charge of Armed Robbery. Defendant pleaded “Not Guilty”. Counsel to the Defendant filed a motion for bail pursuant to Section 158 and 162 of the Administration of Criminal Justice Act 2015, Section 35 (4) and 36, (5) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended). Attached is a 12-paragraph affidavit deposed to by Maryam Dogara, a counsel to the law firm of Choicevine Legal Consulting representing the Defendant and attached is a written address. The deponent deposed that until his detention was a graduate and a business man. That the Applicant was in custody of the Nigerian Police Force, Dei Dei Mopol Barracks and thereafter FCT Police Force Command till the 18<sup>th</sup> of September, 2018 wherein he was brought before the High Court of the FCT Jabi and arraigned on charge of Armed Robbery contrary to Section 298 of the Penal Code. That the Applicant appeared before Hon. Justice V.M Venda (Rtd.) on several occasions without the matter proceeding into hearing. That the matter was later transferred to Hon. Justice Peter Affen’s court after the retirement of Hon. Justice V. M Venda and yet the prosecution was unable to present witness to hear the matter. That the prosecution cannot produce any evidence to proof

the commission of this offence. The Applicant has suffered so much psychological trauma as a result of his continuous detention. That the Applicant/Defendant if granted bail will not jump bail, and also prepare for his trial and defence if any. That the Applicant/Defendant has reasonable sureties who will ensure his presence whenever necessary and urges the honourable court to grant him bail.

In their written address Counsel to the Defendant/Applicants submitted that the grant of an application of this nature and indeed any application whatsoever is entirely at the discretion of the Court and this discretion is always to be invoked by placing relevant materials before the Court to warrant the Court to exercise her discretion in favour of the Applicant. That the Applicant vide his affidavit evidence, has placed relevant materials before this Court warranting this Court to exercise its discretion in his favour. Counsel further submitted that it is only where any of the circumstances enumerated under Section 162 (a) — (f) of Administration of Criminal Justice Act (ACJA) 2015, exist that an applicant will be denied bail. Counsel submitted that none of the aforesaid circumstances contemplated under Section 162 (a)-(f) of Administration of Criminal Justice Act (ACJA) 2015, exists in this instant case as can be gleaned from the affidavit in support of this application. Counsel also submitted that this Court can conveniently grant bail to the Applicant notwithstanding the stage of the proceeding. That this Court is empowered inherently and by other judicial authorities to exercise its discretion in favour of the Defendant and grant him bail in the interest of Justice. Counsel equally submitted that bail is the right of every accused person charged for a non-capital offence. That the Defendant will abide by the said undertaking that he shall attend to his trials and shall not jump bail as deposed in the affidavit in support of this application. Finally, counsel submitted that it is also the position of the law that in exercising the discretion of granting bail, the conditions attached to it must not be excessive or stringent, this is aptly captured by the provision of Section 165 (1) of Administration of Criminal Justice Act (ACJA) 2015 and urged the court to grant this application and grant the Defendant bail on very liberal terms. Counsel relied on the following authorities amongst others: -

1. **ABACHA vs STATE (2002) FWLR (pt 98) 863;**
2. **BAMAIYI vs. STATE (2001) 8 NWLR (Pt. 715) 270**
3. **BOLAKALE vs. STATE (2006) ALL FWLR (Pt. 312) 2168, 2177 A-B.**

4. EGHOR Vs. STATE (1990) 3 NWLR (Pt. 139) 184
5. ENGR. SUCCESS OBIOMA VS. FRN (2005) 13 WRN 131 @ 168  
lines 30-40
6. DOGO VS. COP (1980) 1 NCR 14.

In response to the above, Respondent filed a 9 paragraph Counter affidavit, deposed to by David Emezie, a Principal executive officer attached to the department of Public Prosecutions, Federal Ministry of Justice. Annexed is a Written address. The Prosecution averred that the Defendant in the Statement he made at Zuba Police Station stated that he obtained SSCE from Government Secondary school, Gwagwa in 2011 and after his SSCE, he had been doing different types of job. That Since the Office of the Attorney General of the Federation and Minister of Justice took over the prosecution of this case, the prosecution could not make progress because the Defendant had no legal representative for a long time. That the prosecution will not be the cause of any undue delay in the trial of this case as all the prosecution witnesses are ready and willing to testify against the defendant. That there is nothing before the Court to show that the defendant had suffered psychological trauma. That there is nothing before the Court to show that the Defendant's health would fail if he continues to stay in the Correctional Center. That the Defendant/Applicant is standing trial for Armed Robbery and the punishment is severe that it is capable of inducing him to jump bail. That Granting bail to the Defendant/Applicant will prejudice the interest of the Complainant because that may be the end of this case. That there is no evidence to show that the Defendant/Applicant has any serious health problem or special circumstances that will sway the court to grant him bail. That the proof of evidence before this court shows that the prosecution has strong case against the Defendant/Applicant. That the prosecution is prepared to conclude this trial timeously and the prosecution will not be cause of any undue delay in the trial of this case. That it is not in the interest of justice to grant the Defendant's application.

Learned Counsel to the Prosecution raised a sole issue for determination to wit: "Whether bail application pending trial in a

serious offence, such as Armed Robbery is granted as a matter of course”.

Counsel to the Respondent submitted that it is a trite law that the grant of a bail to an accused person standing trial is at the discretion of the court. However, the discretion of the court must be exercised judicially and judiciously. Counsel submitted that the Defendant/Applicant is standing trial on a one Count Charge of Armed Robbery contrary to Section 298 of the Penal Code Law CAP 68 Northern States of Nigeria and upon conviction the Defendant may be sentenced to life imprisonment and urged the court to hold that the charge and punishment are serious and weighty and where this is so, the court should be alive to its duty to exercise its discretion against admitting the applicant to bail. Counsel then submitted that the possibility that the Applicant will jump bail is high due to the nature of the charge for which he is standing trial and the punishment thereof. Counsel submitted that there is high possibility that Defendant/Applicant will interfere with the prosecution's witnesses as both the Applicant and the Nominal Complainant lived at the same address at the Mopol Barracks, Dei-Dei FCT, Abuja and there is propensity that he will intimidate, harass or strong-arm her. Counsel submitted that armed robbery is the order of the day in the Federal Capital Territory, Abuja and urged the court to refuse the application for bail, to prevent the defendant from committing more crimes while on bail and to deter other criminals from committing same or similar offences. Counsel further submitted that there is nothing to show that the Defendant is suffering from any serious illness that requires urgent medical attention which the Correctional Centre cannot effectively manage. Learned counsel urged the court to refuse the application for bail on the grounds that there is high tendency that the Defendant/Applicant will intimidate, threaten or attack prosecution witnesses.; That there is also possibility of the Defendant/Applicant committing same or other offences if granted bail and that there is possibility that the Defendant/Applicant will jump bail, thereby frustrating the prosecution of this case. Counsel urged the Honourable Court to refuse this application in its entirety and order for accelerated

hearing as their witnesses are available and also urged the court to dismiss this application for bail as same is lacking in merit. Counsel relied on the following cases amongst others:

1. **ABACHA V THE STATE (2002) 5 NWLR (PT.761) pg.638 at 648 ratio 2; BAMAIYI V THE STATE (2001) 8 NWLR (PT. 715) pg. 270 at 274 ratio 2.**
2. **STATE VS FELIX (1979) L.R.N. p.308.**
3. **OFULUE vs. FGN (200) 3 NWLR (PT. 913) 751 @ 579-598, 600601 (CA),**
4. **Section 162 (a-D of the Administration Criminal Justice Act, 2015.**

Having read all the processes and listened to arguments from both sides, in order to determine this instant bail application, the sole issue for determination is **“whether from the facts and circumstances of this case, the Defendant/Applicant is entitled to bail pending trial.”** Bail is a Constitutional right as held in the case of **ENEBELI V CHIEF OF ARMY STAFF (2000) 9 NWLR (pt671) page 119 at 124** thus:-

*“Bail being a constitutional right, the burden is squarely on the prosecution who opposes bail to prove that facts relied upon by the Applicant, do not warrant the granting of the application. This is because there is a constitutional presumption in favour of the liberty and innocence of the individual.”*

The above decision is in line with the provision of **Section 36 (5) of the 1999 Constitution (as amended)** which provides

*“Every person who is charge with a criminal offence shall be presumed to be innocent until he is proved guilty, provided that nothing in this section shall invalidate any law by reason only that the law imposes upon any such person the burden of proving particular facts.”*

Thus, although bail is a constitutional right of a person standing trial, however by virtue of **Section 35 (1) (c) of the 1999 Constitution (as amended)** the right can be curtailed or bail is not ordinarily granted except on certain circumstances as provided by **Section 162(a) (f) of the**

**Administration of Criminal Justice Act, 2015.** The court of Appeal in **OYEBAMJI AKEEM V FRN (2016) LPELR 41120** held as follows:-

*“In the instant case, I am of the view that save where the circumstances or factors enumerated in section 162 (a)- (F) of the Administration of Criminal Justice Act, 2015 have been shown to exist, where an Accused person makes an application, the court is enjoined and mandated or commanded to grant bail. Thus, a combined reading of section 35 (4) of the 1999 Constitution and section 162 of Administration of Criminal Justice Act, 2015 makes bail a right and therefore mandatory were an Accused person applied for same. All that an Accused person need do is to file an application for bail stating why he is entitled to bail. Once that is done the onus would be on the prosecution to present before the Court reasons why the Accuse person should not be granted bail, in such a way as to bring the Accused person’s case within any of the exceptions enumerated in section 162 (a)-(f) of Administration of Criminal Justice Act, 2015 are not the circumstances where an Accused person may be denied bail.”*

In the instant case, as rightly submitted by the learned prosecuting Counsel, the nature of the offence in which the Defendant/Applicant is standing trial is for Armed Robbery. The offence of Armed Robbery Alleged against this applicant is a non-bailable offence. However, I observed that from the one count charge the Defendant is not charged under the **Armed Robbery and Firearms, LFN 2004** which carries a death sentence but rather the Defendant is charged for an offence punishable under **Section 298 of the Penal Code** which punishment carries a term of imprisonment for life or any less term. The said section provides as follows: -

*298. Whoever commits robbery shall be punished—*

*(a) with imprisonment for a term which may extend to ten years and shall also be liable to fine; and*

*(b) if the robbery is committed—*

*(i) between sunset and sunrise on the highway. or*

(ii) *between sunset and sunrise from a person sleeping or having lain down to sleep in the open air.*

*with imprisonment for a term which may extend to fourteen years and shall also be liable to fine; and*

*(c) if the robbery is committed by a person armed with a dangerous or an offensive weapon or instrument. to imprisonment for life or a less term and shall also be liable to fine.*

In other words, the allegation against the Defendant/Applicant, on conviction does not carry death sentence, hence it is not a capital offence. Now from the provisions of **Section 162 (a)-(f) of Administration of Criminal Justice Act, 2015** all that an accused person need do is to file an application for bail stating why he is entitled to bail. Once that is done the onus would be on the prosecution to present before the Court reasons why the accused person should not be granted bail, in such a way as to bring the accused person's case within any of the exceptions enumerated in the section.

I have perused the proof of evidence including the charge filed by the complainant/Respondent. Apart from the prosecution's averment in their counter affidavit in opposition to this application, there is nothing before this court to show that the Defendant when released on bail will breach the provisions of **Section 162 (a-f) of Administration of Criminal Justice Act, 2015**. I have equally perused the affidavit evidence of the Defendant/Applicant at paragraphs 7,8 and 9 of the supporting affidavit, the Defendant/Applicant deposed that he would produce reasonable sureties; that he would not jump bail if granted and that he would make himself available for trial. The depositions at paragraphs 7,8 and 9 of the supporting affidavit are the materials or facts to be considered by a Court in determining whether to grant or refused bail. In the case of **ISHAYA BAMAIYI V THE STATE & ORS (2001) LPELR 731**, the Supreme Court held:-

*“It is the essence of the matter that the evidence available (usually by the proofs of evidence) filed by the prosecution in Court be examined when considering bail. Further facts and circumstances may be brought forward by way of affidavit*

*evidence. It could well be that it is the likelihood of the Accused making himself available to stand his trial in any given case that may be of paramount concern. There is authority for saying that it is a proper and useful test whether bail should be granted or refused to consider the probability that the Accused will appear in Court to take his trial. In that regard it is proper to consider the nature of the offence, the nature of the evidence in support of it, and the severity of the punishment which conviction will entail.”*

In the instant case, I have considered the proofs of evidence including the charge filed by the Complainant/Respondent, the nature of the offence and the punishment on conviction vis- a vis the affidavit evidence of the Defendant. From the antecedent of this case, the charge was filed 2018 and the defendant has been in detention for 3years. More so, the offence is not a capital offence that attract death sentence. In the circumstances and facts of this case, I will exercise my discretion and grant bail to the Defendant/Applicant. The Defendant/Applicant is hereby admitted to bail on the following terms:-

1. The Applicant is admitted to bail in the sum of ₦5,000,000.00 (Five Million Naira) and two sureties each in the same amount who are to depose to an affidavit of means.
2. That one of the sureties shall deposit title documents to his property within the Federal Capital Territory and same to be verified by the prosecution and Registrar of this Court.
3. That the sureties shall be Civil Servants employed in the Federal Capital Territory on grade level 12 and above, with a verifiable office and house address within the Federal Capital Territory and verification is to be carried out by the prosecution and Registrar of this Court.

**Parties:** Defendant is present.

**Appearances:** E.T.C. Emezina appearing for the Prosecution. James Hope appearing for the Defendants.

**HON. JUSTICE M. OSHO-ADEBIYI**

**JUDGE**  
**17<sup>TH</sup>MAY, 2022**