

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT GWAGWALADA- ABUJA

THIS THURSDAY THE 7TH DAY OF DECEMBER, 2023

BEFORE HIS LORDSHIP: HON. JUSTICE ALIYU YUNUSA SHAFIA

SUIT NO: FCT/HC/CR/370/2023

BETWEEN:

COMMISSIONER OF POLICE COMPLAINANT

AND

SAMUELA YAHAYA..... DEFENDANT

RULING

This ruling is on a motion on notice with motion No: M/370/2023 dated the 7th November, 2023 and filed the same date. The motion is brought pursuant to section 6(6), 23 (1) and 36(5) of the CFN 1999 as amended), sections 158, 162, 163 and 164 of the ACJA 2015 and under the inherent jurisdiction of this Honourable court praying for the following:

1. An order of this honourable court admitting the defendant/ applicant to bail pending the determination of his trial
2. And for such further order or orders 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 applicant is still presumed innocent under the 1999 constitution.
- b. That the defendant/Applicant was in SARS detention for good five months and was later transferred to Kuje correctional centre without arraignment in any competent court.
- c. That the defendant/applicant was remanded in Kuje correctional centre custody.

Attached to the motion is an affidavit of 8 paragraph deposed to by James Onuminya of No 10 Gimbiya Street, Area 11 Garki Abuja, and the defendant/Applicant written address in support of motion for bail of 5 pages.

The complainant/Respondent on receipt of the motion filed a counter affidavit in opposition of bail application deposed to by one Insp. Philip Tumba of criminal investigation command Abuja of 11 paragraph. Attached to the counter are annexures marked exhibit 1 .and a written address in support of the counter affidavit.

The defendant/Applicant counsel in moving the motion placed reliance on all the averments in the said affidavit and adopted the written address as it's oral submission and urge the court to grant the reliefs sought therein.

In the said written address, he formulated a sole issue distilled for determination to wit:

“Whether taking into consideration the facts as deposed in the affidavit in support of this Application, this Honourable court can exercise it's discretion judicially and judiciously to admit pending trial”

The claimant/ respondent in its written address also formulated a sole issue for determination to wit:

“whether the applicant has sufficient materials before the honourable court to show the existence of an exceptional circumstance of court discretion in his favour? Reason being that the offence is charge with before a high court in charge No: CR/012/2023 is that of a capital punishment if found guilty?

A perusal of the affidavit of the defendant/Applicant especially paragraph 6, 7, & 8 and complainant /Respondent counter affidavit, has the defendant/Applicant placed sufficient materials before the honourable court to show the existence if an exceptional circumstance to warrant the exercise of court discretion in his favour? Reasons being that the offence is charged with before high court in charge No: CR/012/2023 is that of capital punishment is found guilty?

On this it is the submission of the complainant/Respondent in it's counter affidavit that the power of court to grant bail pending arraignment/implies a discretion which is to be exercised judiciously and judicially based on the materials before the court. That unless the party can show exceptional

circumstance in a capital offence and that what is a special or exceptional circumstance varies from case to case.

Furthermore, he submitted that in exercising the judicial discretion of court to grant or refuse bail pending trial, the court is bound to examine the evidence before it without correcting any extraneous matter, similarly, the court must consider the facts and circumstance of the case most importantly the proof of evidence in the prosecution case, in other words, the court's discretion must be exercised not very judicially but judiciously considering the nature of allegation, the availability of evidence in support of the prosecution case see.

1. Eye Vs FRN (2018) 7 NWLR pt. 1619) 495.
2. Suleiman V COP Plateau State (2008) 8 NWLR (part. 1089) 298

In summary he submitted that, the appellant from his supporting affidavit has failed woefully to show the existence of an unusual or exceptional circumstance to warrant the exercise of the court discretion in his favour, and urge the court to dismiss the application of the Applicant as lacking in merit and devoid of substance.

The learned Applicant/counsel in his written address referred this court to the provisions of section 36(5) of the 1999 CFN as amended), section 36(6), section 156, 162 of the ACJA 2015 and the following cases:

1. Ikhazuagbe V COP (2004) NWLR (PART 872) PAGE. 346, AT 363 PARAGRAPH e-f.
2. Asari V FRN (2009) 4 NSCQR 158.
3. Musa V COP (2009)9 NWLR (PT. 879) PAGE. 500 paragraph D-H.
4. Oladele V State (1993) 1 NWLR (pt. 269) page. 294.
5. Enwere V COP (1993) 6 NWLR (Part. 299) page. 294. And urge the court to exercise its discretion judicially and judiciously in favour of the defendant/Applicant.

I have gone through the motion papers the affidavit of the defendant/Applicant I am more concerned about the Exhibit E being a charge with number C/012/2023 dated 02/11/2023 filed before High Court of Justice 29 Jabi FCT Abuja. By this charge pending before High Court of Justice, Jabi court 29 Abuja Suffice that the Applicant was remanded at the Kuje Correctional centre by the order of High Court of Justice court 29 FCT, Abuja. That being the case, the proper place or court to hear this application is the same High court of justice 29 Jabi, and this court, as the defendant/Applicant is not standing trial before this court to warrant this court to exercise it's discretion in admitting him bail.

In view of the forgoing I hold that, what the learned applicant counsel is trying to do is forum shopping or short cut.

This court has no jurisdiction to exercise a decision in favour of the defendant/Applicant as far as this matter is concerned.

Based on the charge prayed before High Court 29 Jabi, I shall refuse to grant the reliefs sought by the Applicant counsel.

Hence this motion is hereby dismissed and through at the back of stream. As the facts and circumstance of this application does not warrant such an application to be brought before this court.

The application is hereby dismissed as it's lacking in merit.

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Hon. Justice A.Y. Shafa

Appearance:

1. O. O. Ajadi for the Applicant.
2. The defence not in court