

**IN THE HIGH COURT OF JUSTICE OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT HIGH COURT MAITAMA –ABUJA
BEFORE: HIS LORDSHIP HON. JUSTICE SAMIRAH UMAR BATURE**

COURT CLERKS: JAMILA OMEKE & ORS

COURT NUMBER: HIGH COURT NO. 25

CHARGE NUMBER: CR /1075/2020

MOTION NO: M/4051/2021

DATE: 14/7/2021

BETWEEN:

COMMISSIONER OF POLICE.....COMPLAINANT/RESPONDENT

AND

- | | | |
|---------------------------------|---|--------------------------------|
| 1. IBRAHIM ALI (M) | } | ..DEFENDANTS/APPLICANTS |
| 2. ABDULLAHI IBRAHIM (M) | | |

RULING

APPEARANCES:

Prosecution absent.

C. F. Eze Esq for the Defendants.

Defendants in Court.

The Defendants/Applicants approached this HONORABLE COURT via a Motion on Notice with motion number **M/4051/2021** dated 29th day of June 2021 and filed on the 30th day of March 2021 praying the court for the following:

“(1). An order of this honorable court admitting the Defendants/ Applicants to bail on liberal terms pending the hearing and final determination of this case.

(2). And for such further orders as this Honorable Court may deem fit to make in the circumstances.”

In support of this motion is a 23-paragraphed affidavit deposed to by one Ashiwel Abraham, a secretary in the law firm of Hass-Liman & Associates, Greenfield chambers, Counsel to the Defendants/Applicants. In compliance with the rules of this honorable court, counsel filed a written address wherein he formulated a sole issue for determination to wit:

Whether or not this application is grantable in law?

While arguing the lone issue, learned counsel submitted that, the Defendants/Applicants are only being suspected or accused of committing an offence. The Defendants/Applicants are entitled to bail application as they are only being accused of committing an offence and such, they are innocent in the eyes of the law until the contrary is proven. Relying on Sections 158 of the ACJA 2015 and Section 162 of the ACJA 2015, counsel argued that there is no reasonable ground to believe that the Defendants/Applicants will commit another offence.

The learned counsel further submitted that that they undertake to ensure that all undertakings as contained in the affidavit in support of this application are respected and observed by the Defendants/Applicants.

In another submission, Counsel stated that the grant or refusal of bail is at the discretion of the Court and that this Honorable Court has the requisite discretion to either grant or refuse bail Counsel relied on the following cases of **ALHAJI MUJAHID DOKUBO ASARY V**

FRN (2007)12 NWLR PT 1048 (220 – 520) PG 329, DOKUBA ASARI V. FRN (SUPRA) and SULEIMAN V. COP (2008) VOL 162 LAW REPORT OF COURT OF NIGERIAN 155. AT PAGES 159 – 160 RATIO 1 AT PAGES 174JJ & 175AK.

More so, learned counsel submitted that at this stage, the defendants remain innocent of the alleged offence and thus need adequate facilities (bail inclusive) to prepare for his defence and that the alleged offence for which the Defendants/Applicants are standing trial does not attract death sentence upon conviction and same isailable at the discretion of the Court, Counsel cited in support **Sections 36(5) and 36 (6)(b) of the 1999 Constitution of the FRN (as amended); Section 6(b) and 1 (1) (2) (a & b) of the Robbery and Firearms (Special Provisions) Act Cap R11 LFN 2004** and the case of **ALAYA V STATE (2017) 16 NWLR (PY 1061) @ Pages 488 – 499.**

In conclusion, Counsel urged the Court to uphold their submissions and admit the Defendants to bail pending the hearing and determination of the case.

I have carefully perused the motion on notice, the reliefs sought, the supporting affidavit and the written address filed in support. It is therefore my view that the issue for determination is whether the Defendants/Applicants have made out a case for the grant of this application. I will start by saying that by virtue of the provisions of **Sections 35(1) and 36 (5) of the CRFN 1999 (As amended)** not only is an accused person presumed innocent until proven otherwise, he is also entitled to his personal liberty. It is therefore the onus on the prosecution to prove that an accused is not entitled to bail.

However, it is pertinent to sate that the grant or refusal of bail is entirely at the discretion of the Court, such discretion must be exercised judiciously and judicially. In this respect, I refer to the case of **OGBUAWA V FRN (2011) LPELR – 4854 (CA)** where the court held

Per MOHAMMED LADAN TSAMIYA, JCA (Pp. 11 - 11 Paras F - F) thus:

"...It is trite law that the grant or refusal of an application for bail is at the discretion of the Court which discretion must not only be exercised judicially but judiciously..."

See also the case of **EYE V FRN (2018) LPELR 43599 (SC)**.

It is also important to note that there are certain factors the courts must consider in the grant or refusal of bail.

The factors were enumerated by the court in the case of **UCHE V FRN, (2016) LPELR-41301(CA)** Per **ABIMBOLA OSARUGUE OBASEKI-ADEJUMO, JCA (Pp 8 - 9 Paras D - A)** where the court held thus:

"...For bail pending trial, the factors to be considered in the grant or otherwise of bail to an Applicant include: (a) the availability of the accused to stand trial; (b) the nature and gravity of the offence; (c) the likelihood of the accused committing offence while on bail; (d) the criminal antecedents of the accused; (e) the likelihood of the accused interfering with the course of justice; (f) the likelihood of further charge being filed; (g) detention for the protection of the accused..."

Similarly, it was held in the case of **BAMAIYI V FRN (2016) LPELR-41934 (CA)**, Per **MODUPE FASANMI, JCA** at pages 11 – 12, Paras B - A thus;

"...The factors set out by the Supreme Court are as follows: (1) Evidence available against the accused. (2) Availability of the accused to stand trial. (3) The nature and gravity of the offence. (4) The likelihood of the accused committing another offence while on bail. (5) The likelihood of the accused interfering with the course of justice. (6) The criminal antecedent of the accused. (7) The likelihood of other charges

being brought against the accused. (8) The probability of guilt. (9) Detention for the protection of the accused. (10) The necessity to procure medical or social report pending final disposal of the case..."

Before I proceed, let me point out here that from the record of the Court, the prosecution was served with the motion for bail specifically on 1/7/2021 as shown on the endorsement and return copy of the motion. This means that the prosecution is aware of the pending motion for bail and did not file anything in opposition. The implication therefore is that the motion for bail is not opposed by the prosecution. Nevertheless, the law as stated in the case of **UCHE V FRN (SUPRA)** and **BAMAIYI V FRN (SUPRA)** is that court is guided by certain factors in considering the grant of bail among which is the nature and gravity of the offence.

In the instant case, from the Charges preferred against the Defendants that is armed robbery is a grievous offence. In other words, the nature of the alleged offence is a serious one, a capital offence which attracts severe penalty upon conviction.

However, it was deposed in paragraph 15 of the supporting affidavit that the 1st Defendant /Applicant has been afflicted with a disease that is oozing out puss. It is trite law that the medical condition of an accused person is a factor to be considered by the Court in an application for grant bail. However, the Supreme Court has this to say in the case of **ABACHA V FRN (2002) LPELR 15 (SC)**, Per **EMMANUEL OLAYINKA AYOOLA, JSC** at pages 10 – 11, Paras E – A that:

"...The special medical need of an accused person whose proven state of health needs special medical attention which the authorities may not be able to provide is a factor that may be put before the Court for consideration in the exercise of

discretion to grant bail to the accused person. Such need is not brought before the Court by mere assertion of the accused or his counsel, but on satisfactory and convincing evidence..."

In the instant case, it was merely asserted or deposed to the fact that the 1st Defendant applicant is afflicted with a disease, no any satisfactory and convincing evidence was placed before the court in prove of the said assertion as required by law.

By the provisions of Section 161(1) of the ACJ Act 2015, a person charged with an offence punishable with death. Shall only be admitted to bail by a Judge of the High Court, under exceptional circumstances, we include those enumerated under subsection 2 a – c thereof.

In particular 2(a) provides that medical report confirming the ill-health shall be produced by the Applicant. Same must be certified by a qualified medical practitioner employed in a Government hospital, also provided that there no medical facilities to take care of his illness by the authority detaining him.

The Applicants have not shown any exceptional circumstances or any other extra-ordinary circumstances that would warrant the Court to consider the grant of bail, moreso, considering the fact that the alleged offence of Armed Robbery punishable under the Robbery and Firearms (Special Provisions) Act Cap R11 LFN 2004, is one that is capital in nature.

In the circumstance, I hereby resolve the issue for determination against the Defendants/Applicants and hold very strongly that this application lacks merit.

To this end, this application for bail is hereby refused. I however order for accelerated hearing of the case.

Signed:

***Hon. Justice Samirah Umar Bature
14/7/2021.***