

On the 6th of November 2020, Mr E.E. Apeh, learned counsel for the 1st to 4th Defendants filed a motion seeking the bail of the 1st to 4th Defendants/Applicants, pursuant to Section 161 (2) (b) of the Administration of Criminal Justice Act 2015.

On 8th February 2021 Mr S.O.Oche for the 5th Defendant filed a similar application with respect to the 5th Defendant/Applicant. Each Application was supported by an affidavit essentially deposing to the fact that the Defendants had been in custody for over a year and 6 months before their arraignment in court on the 16th November 2020.

In counsel's respective written addresses it was argued that the long delay in investigation, arraignment and prosecution of the Defendants amounts to an exceptional circumstance which would warrant the exercise of the court's discretion in their favour, pursuant to Section 161 (2) (b) of Administration of Criminal Justice Act 2015.

In opposing the application, the Prosecution filed a 13 paragraph counter affidavit with a written address on 9th February 2021, the counter affidavit did not deny that the Defendants had been in custody for over a year before their arraignment.

In his oral submission to the court the learned Prosecutor argued that the exceptions in Section 161 of Administration of Criminal Justice Act are conjunctive, not disjunctive and therefore do not avail the Defendants.

That the Defendants are standing trial for a capital offence and will violate Section 162 (a) to (f) if released on bail.

He urged the court to consider the proof of evidence and video confession before the court and reject the application for bail, and instead, order a speedy trial.

In response, Mr Apeh for the 1st to 4th Defendants filed a further affidavit and a written address. He urged that the counter affidavit did not challenge the fact that the 1st to 4th Defendants have been in custody for more than one year and that Section 161 (2) to (c) are mutually exclusive.

MrOche for the 5th Defendant argued likewise. He added that the Defendants are presumed innocent until found guilty. Both learned counsel urged the court to grant bail to the Defendants, relying on several authorities.

I have considered the application, the affidavits on both sides and the written and oral submissions of both learned counsel and the prosecution.

The offences for which the Defendants are charged include capital offences, punishable with death.

Section 161(1) (2) (b) Administration of Criminal Justice Act 2015 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 this section, “exceptional circumstance” include:

(a)

(b) extraordinary delay in the investigation, arraignment and prosecution for a period exceeding one year; or

(c)”

Contrary to the argument of the Prosecutor, the exceptional circumstances enumerated in Section 161 (2) (a) to (c) are disjunctive, and not conjunctive. Therefore where the court finds any instance of (a), (b) (c) to be present, the court may exercise its discretion in favour of the suspect if the court deems it fit in the circumstance.

The main plank of the applications for bail is the extraordinary delay in the arraignment of the Defendants in court on 16th November 2020, their detention exceeding one year. 1st to 4th Defendants since 5th April 2019. 5th Defendant since May 2019.

The Prosecution in their counter affidavit did not challenge or refute this fact. In other words the Prosecution failed to explain the reason for the delay of over one year before the arraignment of the Defendants.

Nevertheless, bail is at the discretion of the court, which discretion must be exercised judicially and judiciously.

The Defendants affidavits also deposed that they will not jump bail, or tamper with investigation or commit other offences.

I must however weigh the proof of evidence before me against the affidavits of the Defendants.

I have also considered the proof of evidence before this court particularly the extra judicial statement of the Defendants and the video attached. In **COSY EMENIKE EZENWAFOR V COMMISSIONER OF POLICE (2009) LPELR – 4004 (CA) AT 39 PARAGRAPH A-C**, Omoleye JCA had this to say:-

“The decisive factors in capital offence cases are not only limited to the gravity of the offence, but include among others the cogency of the evidence or the facts alleged against an applicant.

Therefore, a court which considers only the gravity of the offence involved but fails to look into the facts relied upon in support of a “charge” cannot be said to have exercised its discretion judicially and judiciously under the circumstances of this case, the guiding rules of this court and the principles of law stated above. See **IKPEAZU V COP (2016) LPELR – 41755 (CA)**”

The proof of evidence at this stage appears to me to be weighty in favour of a prima facie case against the Defendants.

In other words, I do not find same to be frivolous or unconnected to the Defendants.

I therefore do not think that this is a matter in which I can exercise my discretion in favour of the Defendants at this stage. I think that both learned counsel for the Defendants ought to have pushed for a speedy trial, rather than an application for bail, which has even further delayed the trial in this matter.

Accordingly, I refuse the bail sought for the 1st to 4th and the 5th Defendants respectively. Both applications are hereby dismissed.

I order the accelerated hearing in this matter.

Hon. Judge