IN THE COURT OF APPEAL
IBADAN JUDICIAL DIVISION
HOLDEN AT IBADAN
ON THURSDAY THE 14TH DAY OF JULY, 2016
BEFORE THEIR LORDSHIPS:

HARUNA SIMON TSAMMANI	**JUSTICE, COURT OF APPEAL**
OBIETONBARA DANIEL-KALIO	**JUSTICE, COURT OF APPEAL**
NONYEREM OKORONKWO	**JUSTICE, COURT OF APPEAL**

CA/IB/290C/2015

BETWEEN

OLANIRAN MUNIRU ADEOLA .... **APPELLANT**

AND

FEDERAL REPUBLIC OF NIGERIA .... **RESPONDENT**

JUDGMENT

(Delivered by HARUNA SIMON TSAMMANI, JCA)

This appeal is against the Ruling of the Federal High Court, sitting at Ibadan in Charge No. FHC/35C/2015 delivered by N. Ayo Emmanuel on the 15th day of June, 2015, wherein the learned trial Judge dismissed the appellant's application for bail filed on the 4th day of June, 2015.

The brief background of this case has been adequately stated by learned senior counsel for the Respondent in page 1 paragraphs 2.01 – 2.04 of the respondent's Brief of Arguments as follows:

> "The Economic and Financial Crimes commission (the commission") received a petition from the Central Bank of Nigeria (the "CBN") against the Appellant herein and some other persons who are

now standing trial before the Federal High Court, Ibadan. The Petition bordered on criminal conspiracy, criminal breach of trust and stealing of money belonging to the CBN. The Petition was supported with an interim report carried out by the auditors of CBN. The Appellant and some other persons who were saddled with the responsibility of coordinating the evacuation, supplying, boxing, receiving of deposits from the deposit money banks (DMBs), payment for withdrawals by the DMBs and classification of cash into currency audited clean (CAC) notes or currency audited dirty (CAD) notes, at the Ibadan branch of Central Bank of Nigeria, conspired with other employees of the Ibadan branch of CBN and employees of Deposit Money Banks (commercial banks) to stuff neatly packed and/or cut Newspapers into boxes that were ordinarily supposed to have been filed with Naira Notes of specific denominations. On two occasions, a box of ₦1000 notes and two (2) boxes of ₦500 naira notes (CAD) were boxed with Newspapers, and passed to briquetting panel for destruction and this fraud was only discovered at the point of briquetting. The commission accepted the Petition and found the allegation made against the Appellant and the other Accused persons to be credible. By practice, where a deposit made by the commercial bank reaches two (2) years without examination, it will be automatically destroyed through briquetting without going through the normal process of marking the currency as counted audited dirty and without going through the examination process."

The facts further disclosed, as stated by learned counsel for the Respondent that:

"Disturbingly, it was discovered that boxes brought to the CBN by different deposit money banks were deliberately allowed to expire in a calculated and fraudulent attempt to avoid examination. Also, in an attempt to swindle the apex bank (CBN), the Appellant and some employees of commercial banks ensured that clean notes were accepted as mutilated notes and ₦1000 notes in a box with a supposed value of ₦10,000,000 were mixed with papers, ₦5 notes, ₦10 notes, fake currencies and at times, with ₦100 notes while the accounts of the commercial banks were credited with the correct value of ₦10,000,000.00 for each box. Mr. Kolawole Babalola, Mr. Olaniran Muniru (Adeola the Appellant herein), Mr. Philip Toogun (all of whom are being jointly tried before the Federal High Court, Ibadan), knowingly conspired with representatives of commercial banks to accept interleafed currency notes. One Thousand Naira (₦1000) currency notes were mixed with either ordinary papers or currencies of lower denominations such as ₦100, ₦50, ₦10, and ₦5, at the expense of the Central Bank of Nigeria. The Appellant herein who at the material time was in the treasury department of the CBN colluded with some officials of the department including one Mr. Toogun Philip Kayode who was merely coopted from an entirely different department, to receive interleafed currency boxes from the employees of the deposit money banks and they collected huge sums of money from the employees of the deposit money banks as their shares in the fraud. The Appellant and the other accused persons used the proceeds of the alleged offences to acquire properties including petrol filling stations, schools and event centres.

As a result of the fraud discovered by the EFCC investigators in the cause of opening boxes,

> the investigators, in the presence of the Appellant and the other Accused Persons, opened additional 106 boxes and to their amazement, the said boxes that were supposed to contain ₦1,060,000,000.00 only contained ₦159,431,700.00 whilst the sum of ₦900,568,300.00 were fraudulently converted by the Accused persons to their own use and then replaced the boxes with papers, polymer and/or notes of lower denominations of ₦5, ₦10, and ₦50 as against the ₦1,000 denomination."

At the close of investigation, the Appellant and the other accused persons were charged before the Federal High court, Ibadan Division on eleven counts for offences committed under Sections 1(1)(b) and 8(a) of the Advance Fee Fraud And Other Related Offences Act, 2006, and punishable under Section 1(3) of the said Act. They were also charged under Sections 7(2) of the Bank Employees etc (Declaration of Assets) Act, Cap.B1, Laws of the Federation of Nigeria, 2004; Sections 1(2)(c) and 19(6) of the Miscellaneous Offences Act, Cap.M17, Laws of the Federation of Nigeria, 2004; Sections 435(1) and 438(a) of the Criminal Code Act, Cap.C38, Laws of the Federation of Nigeria, 2004. The Appellant featured prominently in Counts 1, 2, 4, 5, 7 and 9 of the charge. Upon arraignment, the Appellant pleaded not guilty on all counts.

The Appellant, just like the other accused persons, filed an application seeking that he be released on bail. The said Motion which is contained at pages 129 – 130 of the Record of Appeal, was dated and filed on the 4th day of June, 2015. It was supported by an Affidavit of eleven (11) paragraphs, deposed to by one Olajire Ajayi, who described himself as a Legal Practitioner in the Chambers of Olalekan Ojo & Co, who are counsel

for the Accused/Appellant. The Motion was also accompanied by Written Address as required by the Rules of that court. The prosecution, who are the Respondents herein, responded by filing a Counter-Affidavit of 19 paragraphs deposed to by one Olapade Adaran, a Senior Detective Superintendent with the E.F.C.C. and a member of the team of operatives that investigated the Petition. A Written Address was also filed in support. The Appellant also filed a Further-Affidavit of eight (8) paragraphs, within a view to answering to some of the facts deposed to in the Counter-Affidavit and also a Reply to the Respondent's Address on points of law. The Motion was argued together with that of the other accused persons on the 9th day of June, 2015, and in a consolidated Ruling delivered on the 15th day of June, 2015, the learned trial Judge refused bail to the Appellant. The Appellant being aggrieved by that decision, has now filed this appeal.

The Notice of Appeal which is at pages 206 – 213 of the Record of Appeal was dated and filed on the 18/6/2015. It consists of six (6) Grounds of Appeal. The parties then complied with the Fast Track (Practice Directions) of this court by filing Briefs of Arguments. The Appellant's Brief of Arguments is the Amended Appellant's Brief of Arguments, settled by Olalekan Ojo; Esq, and it is dated the 11/5/2016 but deemed filed on the 16/5/2016 pursuant to the leave of this court granted on the 16/5/2006. Therein, three (3) issue were raised for determination as follows:

1. Whether the learned trial Judge was right in dismissing the Appellant's objection to the competence of paragraphs 8G, 8H,8I, 8K, 8N, 8O, 8Q, 8R, 8U, 10B, 10C, 10E, 11, 14, 15 and 16 of the Respondent's Counter Affidavit

on the ground that the said paragraphs violate Section 115 of the Evidence Act, 2011 and relying on the depositions in the said paragraphs in coming to the decision to dismiss the Appellant's Motion for bail pending trial.
(Ground 4).

2. Whether or not the learned trial Judge exercised his discretion judiciously, judicially, reasonably and rightly by refusing to admit the Appellant to bail pending trial having regard to the Affidavit evidence before the trial court, the nature of the offences with which the Appellant has been charged, and the provisions of Section 162 of the Administration of Criminal Justice Act, 2015 dealing with the right of the Appellant to be admitted to bail pending his trial.
(Distilled from Grounds 2, 3 and 6).

3. Whether or not the pronouncements of the learned trial Judge in the Ruling dismissing the appellant's Motion for bail pending trial to the effect that the materials in the proof of evidence filed along with the charge preferred against the Appellant are "weighty, mind-boggling and suggest a new wave in economic crimes which must be treated with all seriousness", amount to the learned trial Judge pre-judging or predetermining the issue or some of the issues to be determined in the substantive case, by reason of which the learned trial Judge ought to be disqualified from proceeding with the hearing of the substantive case.
(Distilled from Ground 5).

The Respondent's Brief of Arguments settled by Rotimi Jacobs, SAN is the Amended Respondent's Brief of arguments dated and filed on the 18/5/2016. Therein, two issues were distilled for determination as follows:

1. Whether having regard to the facts of this case and the relevant provisions of the law, the learned trial Judge did not exercise his Lordship's discretion judicially and judiciously in refusing to admit the Appellant to bail as to warrant an interference with the exercise of the discretion by this Honourable Court. (Grounds 1, 2, 3, 4 and 5).

2. Whether the observation of the learned trial Judge on the cogency of the materials contained in the proof of evidence amounted to exhibiting bias against the Appellant as to warrant disqualifying the learned trial Judge from proceeding with the hearing of the substantive case.
(Distilled from Ground 6).

I wish to point out at this juncture that, the facts and circumstances in this appeal, including the parties thereto are the same with those in Appeal No: CA/IB/285C/2015. The processes filed in respect to the bail of the Appellant, leading to the Ruling of the trial court, which acuminated in this appeal are similar in all material respects. The Grounds of Appeal, the issues raised for determination and the arguments of counsel are materially and substantially similar in context. That is why at the hearing of the appeals in the 19th day of May, 2016, Mr. Olalekan Ojo of learned counsel for the Appellant submitted that:

> "There are three appeals filed by the Appellant against the Ruling of the Federal High Court, sitting

at Ibadan, presided over by Hon. Justice Ayo Emmanuel, delivered on the 15/6/15. The Appeals are CA/IB/285^{C}/2015; CA/IB/290^{C}/2015 and CA/IB/291^{C}/2015. I humbly apply that in view of the similarities in the facts and the questions of law in those appeals, I apply that the decision in CA/IB/285^{C}/2015 should be binding and apply in the remaining two appeals earlier mentioned."

Mr. Obaribirin of learned counsel for the Respondent concurred with the procedure suggested by learned counsel for the Appellant.

On that score, I hereby adopt and apply all my reasoning's and conclusions in Appeal No: CA/IB/285^{C}/2015: **OLANIRAN MUNIRU ADEOLA V. FEDERAL REPUBLIC OF NIGERIA** to this appeal. Accordingly, I affirm the Ruling of the lower court delivered on the 15th day of June, 2015 in Charge No: FHC/IB/36^{C}/2015.

HARUNA SIMON TSAMMANI
JUSTICE, COURT OF APPEAL

COUNSEL:

Olalekan Ojo; **Esq** with **Afeez Olabisi**; **Esq** and **Favour Omonefe (Miss)** for the Appellant.

Shola Obaribirin; **Esq** for the Respondent.

CA/I/290^{C}/2015

OBIETONBARA DANIEL-KALIO. JCA

I have had the privilege of a preview of the judgment of my learned brother **Haruna Simon Tsammani JCA.** The facts in this appeal are very similar to the facts in **CA/IB/2885^{C}/2015**. The parties in both cases are also the same. My lord extensively considered the facts and the law in **CA/IB/285^{C}/2015** and arrived at the decision that the appeal in that case lacked merit. In my modest contribution to that judgment, I agreed that the appeal indeed lacked merit and should be dismissed. My views in this appeal cannot be any different. Consequently, the Ruling of the lower court is hereby affirmed.

HON. JUSTICE OBIETONBARA DANIEL-KALIO
JUSTICE, COURT OF APPEAL

CA/I/290C/2015

NONYEREM OKORONKWO, JCA.

I have been privileged to read in advance the judgment just delivered by my lord ***Haruna Simon Tsammani, JCA*** in this appeal against the judgment of the Federal High Court Ibadan Division refusing bail to the applicant.

It may be that on the specific facts of the case the learned trial judge had good reasons to exercise his discretion the way he did and for that reason, I agree with his Lordship in this appeal.

However, I must point out that judgments of trial courts refusing bail to citizens must clearly demonstrate that such court is fully cognizant of the presumption cast on citizens by section 36(5) of the Constitution and then have the prosecution displace such presumption. Then and only then can a trial court refuse bail to a citizen.

In a case similar to this present and arising out of the same transaction, being Appeal No. CA/I/228/2015 Oyebamiji Akeem vs. Federal Republic of Nigeria, I said in part thus:

> *"A further consideration in this appeal is the provision of section 162 of the New Administration of Criminal Justice Act 1915 which provides, I will quote again for emphasis that:*
>
> > *"(1) A defendant charged with an offence punishable with imprisonment for a term exceeding three years shall on application to the court, be released on bail except in any of the following circumstances.*

a. *Where there is a reasonable ground to believe that the defendant will, where release on bail commit another offence;*

b. *Attempt to evade his trial;*

c. *Attempt to influence, interfere with, intimidate witnesses, and or interfere in the investigation of the case;*

d. *Attempt to conceal or destroy evidence;*

e. *Prejudice the proper investigation of the case; or*

f. *Undermine or jeopardize the objectives or the purpose of the functioning of the criminal justice administration, including the bail system." (emphasis supplied).*

My view of the section is that it makes bail in every circumstance where it applies, a right except where the case comes under the exceptions in (a) (b) (c) (d) (e) and (f). If it is a right, the onus to show that in a given case, an applicant is not entitled to such statutory right because his case or circumstance comes under the exceptions in a, b, c, d and e is on the prosecution and not the applicant as learned Senior Advocate for the respondent herein has argued.

Section 162 of the Criminal Justice Administration Act did not merely codify principles relating to bail as learned counsel for the respondent argued in 4.08 and 4.09 of his brief. The section i.e. 162 ACJA properly placed the burden of proof where it customarily should be – on the

prosecution. It thereby gives meaning to the solemn and enshrined provisions of the constitution in section 36 (5) which pontifically declares –

"Every person who is charge with a criminal offence shall be presumed to be innocent until he is proved guilty" what is presumed? What does it mean? To "Presume", the Oxford Dictionary tenders it as (1) supposes to be true; take for granted. It is the same as assumed which the same dictionary defines as take or accept as being true, without proof. Such powerful adjective is used for section 36 (5) of the constitution.

It is this section of the constitution that section 162 of the Administration of Criminal Justice Act 2015 came to give meaning to and reverse the burden of proof in matters of bail. Indeed the court in ***Adams vs. Attorney-General of the Federation 2007 All FWLR (pt. 355) 429 at 445*** seem to have had this principle in mind when it declared.

> *"Since the court presumes in favour of the liberty of the subject and his innocence until found guilty, the onus is on the prosecution to show in a given case, that an accused or applicant for bail is one that should be refused bail" (emphasis supplied).*

I am not unaware of the dicta of my lord Peter-Odili JCA (now JSC) in **Chigozie Idoko vs. C .O.P. (2006) LPELR 11609 (CA)** *to the effect that:*

> *"If the Constitutional provision is applied to the letter in a bail application, then every accused must be released on bail awaiting trial and this will not be in the interest of enforcement of the criminal process. Such a chaotic situation was never intended by the makers of the Constitution".*

No! What the constitutional provision does is to cloth the citizen with a presumption of innocence and to place the onus of doubting that innocence on the prosecution opposing bail.

This is hardly the case! What we have is that the applicant has to bear the burden and prove that he is a person entitled to bail.

The discretion the court has in the matter of bail is a circumscribed type directed only to those exceptional cases as listed in section 162 of the ACJA Act 2015.

Trial courts will do well to be guided by these principles.

NONYEREM OKORONKWO,
JUSTICE, COURT OF APPEAL.