

IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE KADUNA JUDICIAL DIVISION
HOLDEN AT KADUNA
ON MONDAY THE 13TH DAY OF FEBRUARY, 2018 BEFORE HIS
LORDSHIP, THE HONOURABLE JUSTICE S. M. SHUAIBU
JUDGE

CHARGE NO: FHC/KD/56^C/2017

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA - **COMPLAINANT**

AND

ITA CHARLES OYO - **ACCUSED PERSON**

JUDGMENT

The Accused Person herein, **ITA CHARLES OYO**, is standing trial along with five (5) others (now at large) on a single count charge dated the 27th day of December, 2017 and filed on the same day. The particulars of the offence as contained in the charge are given as follows:-

*That you **ITA CHARLES OYO, AUSTIN OKEREKE** (now at large) **DR. DANIEL ESSIEN** (now at large), **STEPHEN IBITOYE** (now at large), **MR. TONNY** (now at large) and **ELDER DAVID** (now at large) sometime between 2016 and 2017 at Kaduna State within the Judicial Division of the Federal High Court, with intent*

to defraud obtain the sum of three Million Nine Hundred and Fifty Thousand Naira (**N3,950,000.00**) through Heritage Bank Plc account number **100095935** and the sum of Two Hundred Thousand Naira (**N200,000.00**) through First City Monument Bank account number **3930257011** from the Sokoto State University by false pretence to wit: Presentation of false Letters of notice granting concession for accreditation of all courses of some Institutions upon payment of money into your Bank account and the Bank account of others now at large, which you knew is false and thereby committed an offence contrary to **Section 1(1) (a)** of Advance Fee Fraud and Other Fraud Related Offences Act, 2006 and punishable under **Section 1(3)** of the same Act.

On the 25th January, 2018, the particulars of the offence contained in the charge as re-produced before now, was read out by the Registrar of Court and explained to the Accused Person in English language. The Accused Person denied the charge.

On the 18th January, 2018 and indeed before the arraignment, the Learned Counsel for the Accused Person had filed an application before the Court, seeking for the following reliefs:-

1. *An order of this Honourable Court admitting the Accused Person/Applicant to bail pending the hearing and determination of the case against him as contained in the charge sheet attached hereto as **Exhibit "A"**.*
2. *And for such further order or orders as this Honourable Court may deem fit to make in the circumstance.*

The grounds upon which the application is made are given as follows on the Body of the motion paper:-

1. *That the Applicant is facing a criminal charge as per **Exhibit "A"** hereto and is desirous of the discretion of this Court granting him bail pending his trial.*
2. *That the Applicant has since 2017 been detained by several security agencies before he was transferred to Economic and Financial Crimes*

Commission (EFCC) Kaduna and has remained at the Economic and Financial Crimes Commission (EFCC) custody till date.

3. *Unless this Court grants the Applicant bail as prayed for, he stands the risk of being kept in prison throughout his trial.*
4. *The Applicant is deemed innocent at this stage of his trial.*

The application is supported by an affidavit of **5 Paragraphs** deposed to by **MUBARAK ILLIYASU**, a Litigation Secretary in the Law Firm of the Learned Defence Counsel, **MESSRS MAMMAN NASIR & CO.** There is one (1) annexture referred to in **Paragraph 4(a)** of the affidavit and marked **Exhibit "A"**. **Exhibit "A"** is a copy of the charge for which the Accused Person is standing trial. Finally, there is a written address filed, being the argument in support of the grounds of the application. The written address was settled by the Learned Counsel for the Accused Person/Applicant, **SOLOMON UTUAGHA ESQ.**

On the 5th day of February, 2018 the Complainant/Respondent filed a Counter-Affidavit opposing the application. The Counter-

Affidavit consists of **11 Paragraphs** deposed to by Detective **SHUAIBU UMAR** one of the officers of the Economic and Financial Crimes Commission (EFCC) that investigated the case leading to the present proceeding. The Counter-Affidavit has one (1) annexure referred to in **Paragraph 9** and marked **Exhibit EFCC "A"**. **Exhibit EFCC "A"** is a copy of a Letter of Grant of Administrative bail to the Accused Person/Applicant by the Economic and Financial Crimes Commission (EFCC). The Letter listed the conditions prescribed for the release of the Applicant on administrative bail. Finally, there is a written address filed by the Learned Prosecution Counsel, **S.H. SA'AD ESQ**, being the Legal arguments opposing the application. On the 6th day of February, 2018, the respective Learned Counsel placed reliance on the respective depositions contained in the supporting affidavit and Counter-Affidavit and also adopted their various legal submissions as contained in the written addresses.

This application is one that calls for the exercise of discretionary powers of Court. It is within Court discretion to allow or refuse bail. Being a matter of discretion, the Law enjoins the exercise of such discretionary powers to be judicial and judicious, taking into account the peculiar facts and circumstances of each case.

Sections 35(1) and 36(5) of the Constitution 1999 as amended provide for the Right to Personal Liberty and Presumption of Innocence. By reason of these provisions, Courts are enjoined to approach the issue of bail liberally especially in non-capital offences as in the instant case. Unless there are cogent and compelling reasons, advising the Court to decide otherwise, Courts generally admit Accused Persons to bail as a matter of course. The right of an Accused Person to be given adequate time and facilities for the preparation of his Defence, as provided for in **Section 36(6) (b)** of the Constitution 1999 as amended, will be ineffectual if the Accused Person is refused bail. See the case of **DANBABA VS. THE STATE (2000) 14 NWLR PART 687 PAGE 396.**

I have had a look at the depositions in the Counter-Affidavit opposing the application to admit the Accused Person/Applicant to bail. An apprehension or anxiety is expressed that by reason of the severity of the sentence upon conviction for the offence for which the Accused Person is standing trial, there is the likelihood that he will jump bail. In the written address filed, the Learned Prosecution Counsel alluded to the enormity of the evidence available to the Prosecution in support of the charge. However, I


hasten to say that in Law, the enormity of the evidence in support of a charge, cannot operate to displace the presumption of innocence under **Section 36(5)** of the Constitution 1999 as amended.

Again by the deposition in the Counter-Affidavit, the Complainant/Respondent said that the Accused Person/Applicant was released on Administrative bail before his arraignment in Court, by the Economic and Financial Crimes Commission (EFCC). That his only sin is that, he failed to meet the bail conditions. If the prosecuting Agency, the Economic and Financial Crimes Commission (EFCC), granted bail to the Accused Person, I am unable to appreciate the reason why the Agency is now opposing the same application before this Court.

Where an application for an order admitting an Accused Person to bail is opposed, the Complainant/Respondent has a duty to furnish the Court with cogent, verifiable and compelling reasons why the application must not be granted. In the instant case, I find that the grounds for opposing the application as given by the Complainant/Respondent fell short of this requirement.

Consequently, the application succeeds. The Accused Person/Applicant is hereby admitted to bail in the sum of One Million Naira (**N1,000,000.00**) and a surety in like sum. The surety who must be resident within jurisdiction must be an owner of a developed landed property within same. The property in question must be covered by a Certificate of Occupancy which shall be confirmed by the issuing authority in writing. The original Certificate of Occupancy shall be deposited with the Deputy Chief Registrar of the Court who shall take custody of same until this case is determined and the surety discharged.

Both the surety and the Accused Person are to submit two (2) recent passport sized photographs each to the Deputy Chief Registrar, who shall in turn attach same to the casefile.



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JUSTICE S.M SHUAIBU
JUDGE
13/02/2018

APPEARANCES:

S.H. Sa'ad Esq. for the Complainant/Respondent.

Solomon Utuagha Esq. for the Accused Person/Applicant