

**IN THE FEDERAL HIGH COURT OF NIGERIA**  
**IN THE KADUNA JUDICIAL DIVISION**  
**HOLDEN AT KADUNA**  
**ON TUESDAY, THE 20<sup>TH</sup> DAY OF FEBRUARY, 2018 BEFORE HIS**  
**LORDSHIP, THE HONOURABLE JUSTICE S. M. SHUAIBU**  
**JUDGE**

**CHARGE NO: FHC/KD/57<sup>c</sup>/2017**

**BETWEEN:**

FEDERAL REPUBLIC OF NIGERIA - **COMPLAINANT/RESPONDENT**

**AND**

CYRIL INAWO (Alias James) - **ACCUSED PERSON/APPLICANT**

**RULING**

The accused person is standing trial before this Court along with two (2) other persons, now at large, for an offence contrary to the relevant provisions of the Advance Fee Fraud and other Fraud related offences Act, LFN 2006.

The particulars of the offence as contained in a single count charge dated 27<sup>th</sup> day of December, 2017 and filed on the same day are given as follows:-

*That you **CYRIL INAWO (alias James), Justin Akpan** (now at large) and **Madam Vivian** (now at large) on or about the 2<sup>nd</sup> day of November, 2016 at*

Kaduna State within the Judicial Division of the Federal High Court, with intent to defraud obtain a Toyota Corolla, 2003 model with chassis number **2T1BR 32E43C740749** at the sum of One Million Seven Hundred and Fifty Thousand Naira from **Sani Ishaq** of **Dawaki Motors Limited** by falsely depositing the Money in his account number **0055056903** domiciled with Diamond Bank Plc via First Bank cheque number **00170634**, with **Oguji Godsent Udoka**, as the Account Holder, by **Justin Akpan**, which after confirmation and release of the Car to you, the payment was reversed by the Bank having been falsely made and which you knew to be false and thereby committed an offence contrary to section 1 (1) (a) of the Advance Fee Fraud and other Fraud related offences Act, LFN 2006 and punishable under section 1 (3) of the same Act.

On the 6<sup>th</sup> day of February, 2018, the particulars of the offences as given before now, were read and explained to the accused person

satisfactorily by the Court Registrar. The accused person denied the charge.

Meanwhile on the 25<sup>th</sup> day of January 2018, the Learned Counsel for the accused person, had filed a motion on notice for an order admitting the Accused person to bail pending the hearing and the determination of the charge against him. There is an affidavit of 5 paragraphs deposed to by **J.D. Amangwai** a Legal Practitioner in the Law Firm of the Learned Counsel for the accused person, in support of the application. Paragraph 3 (c) of the Affidavit, made reference to the charge sheet and the proof of evidence in support of the charge. They are marked exhibits 'A' and 'B' to the supporting affidavit respectively. There is a written address filed, being the argument in support of the grounds of application. The written address was settled by the Learned Counsel for the accused person, **Charles Ojjieme Esq.**

In opposing the application for an order admitting the accused person to bail pending trial, the complainant/Respondent, filed a Counter – Affidavit of 14 paragraphs. The Counter – Affidavit was deposed by Detective **Malami Abubakar**, one of the officers of the Economic and Financial Crime 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 by the Economic and Financial Crimes Commission. (EFCC).

There is a written address filed in support of the Counter Affidavit. The written address was settled by the Learned Prosecution Counsel, **S.H. Sa’ad Esq.** Finally on the 12<sup>th</sup> day of February, 2018, the Learned Counsel for the Accused person/Applicant, filed a further affidavit of 5 paragraphs deposed to by **J.D. Amangwai.**

Arguments on the application was taken on the 13<sup>th</sup> day of February, 2018. On that day, however the Learned Defence Counsel, **Charles Ojijieme Esq** applied to withdraw the further affidavit filed on the 12<sup>th</sup> day of February, 2018. It was accordingly struck out. Learned Counsel then placed reliance on the depositions in the supporting affidavit and adopted his written address as the argument in support of the grounds of the application. The Learned Prosecution Counsel, **S.H. Sa’ad Esq** also adopted his written address as the argument opposing the application.

In his written address, the Learned Defence Counsel argued that based on the supporting affidavit, the accused person/Applicant has placed before the Court sufficient facts as to entitled him to the exercise of Court discretion in his favour. That the issue of bail is one of discretion. Learned Defence Counsel urged the Court to exercise discretion Judicially and Judiciously by admitting the accused person to bail pending his trial. Counsel cited the case of **SULEIMAN VS. C.O.P. (2008) 8 NWLR PART 1089 PAGE 298** especially at pages **322 – 323 paragraphs H – A.**

The Learned Defence Counsel **Charles Ojjieme Esq** submitted that no matter the gravity of the offence for which the accused person is charged, he is nevertheless entitled to his right to Personal Liberty. That section 36 (5) of the Constitution 1999 as amended, also presumed the accused person **Innocent** until the contrary is proved. Counsel concluded that the accused person has no criminal record. He urged the Court to grant the relief sought by the application.

In his written address in reply, the Learned Prosecution Counsel **S.H. Sa'ad Esq** argued that bail pending trial is not granted as a

matter of course. That an Applicant must place before the Court sufficient materials upon which the Court would act upon to exercise discretion in favour of the application. That the present application and the supporting affidavit failed to satisfy this requirement. That in particular, the Accused person has not made an understanding that he will not jump bail if the application is granted. He cited the case of **ABIOLA VS. F R N (1995) 1 NWLR PART 370 PAGE 155** in support.

The Learned Prosecution Counsel, referred the Court to the principles to consider in the exercise of discretion whether to grant or refuse bail. Counsel alluded to the seriousness of the offence and the severity of the sentence upon conviction. He submitted that these would tempt the accused person to run away once admitted to bail pending his trial. Counsel submitted that the accused person had avoided arrest before his arraignment. That a sister Security Agency had to lend a helping hand before the arrest of the accused person was effected. That there is therefore strong likelihood of the accused person jumping bail once the application is granted. Learned Counsel cited the case of **ALATUNJI VS. F R N**



**(2003) 3 NWLR PART 807 PAGE 406** as well as the case of **OMODARA VS. THE STATE (2003) 1 NWLR PART 893 PAGE 80.**

Finally Learned Prosecution Counsel argued that once a person is reasonably suspected to have committed an offence and a charge duly filed, the right to Personal Liberty of the person in the circumstance is legally and rightly curtailed. That the accused person therefore can no longer insists on the right to personal Liberty to secure his release. Counsel urged the Court to refuse the application.

Now, as rightly pointed out by the respective Learned Counsel in this proceeding, the present 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, therefore, no one case or decision is necessarily an authority for another. The exercise of discretion must only be shown to be Judicial and Judicious taking into account the peculiar facts and circumstances of each case. In the case of **UNION BANK OF NIGERIA PLC VS. ASTRA BUILDERS (W.A.) LTD (2010) 5 NWLR PART 1186 PAGE 1**, the Supreme Court said:-

*A Judicial discretion means the power exercised in an official capacity in a manner which appears to be just and proper under a given situation. It must not flow from or be bound by a previous decision of another Court in which a discretion was exercised. It is, in short, an antithesis to the doctrine of **Stare decisis**. There is no hard and fast rule as to the exercise of a Judicial discretion by a Court. If that happens, a discretion becomes fettered.*

One unique fact in this case that would operate to influence the exercise of discretion in the present application, is that two (2) Prosecution witnesses have already been taken in a proceeding that begun on the 6<sup>th</sup> day of February, 2018 when the accused person was arraigned. In the light of the impressive ground covered in this proceeding within a short time, I am of the view that it would not take much time before hearing is concluded.

One of the many principles for consideration by a trial Court in bail application is *the length of time before the trial begins and the length of time the trial would take.*



I have already found that it would not take much time to conclude the hearing in this case. Consequently, I hereby refuse the application for an order admitting the accused person to bail pending trial. Rather in its place I hereby order accelerated hearing.

  
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**JUSTICE S.M. SHUAIBU**  
**JUDGE**  
**20/2/2018**

**.. APPEARANCES:**

**S.H. Sa'ad Esq** for the complainant/Respondent

**Charles Ojijieme Esq** for the accused person/Applicant.

