

IN THE HIGH COURT OF JUSTICE OF KADUNA STATE OF NIGERIA

IN THE KADUNA JUDICIAL DIVISION

HOLDEN AT KADUNA

SUIT NO: KDH/KAD/1/EFCC/2016

BETWEEN

FEDERAL REPUBLIC OF NIGERIA

.....COMPLAINANT

AND

1. MURTALATA SHARIFF AHMED

2. CLETUS ILIYA

3. ESSIEN EKANEM

4. MOHAMMED SANI

..DEFENDANT

5. DAVID MICHAEL

6. JOEL

RECORD OF PROCEEDING

1st and 3rd accused in court, both speak English

2nd, 4th and 5th and 6th at large

Nasiru Salele for prosecution

G. Didam for 1st accused

F.A. Audu with him Suleiman Umar for 3rd accused holding P.Y. Garuba's brief.

Salele: There's an application to prefer a charge against the accused persons dated 8th February, 2016. It is brought pursuant to Section 185 (b) of the CPC. It prays for leave to prefer a charge against the named accused persons. Attached is copy of the charge, verifying affidavit, names and summary of evidence of prosecution witnesses and the extra judicial statements of the accused.

Also annexed are the documentary exhibits, we shall tender. We urge court to grant the application.

Court: I read the affidavit in support, the Proof of Evidence, the Statement of the accused persons including the documents annexed to the application. It is my humble view that there documents read together have disclosed prima facie case of

criminal conspiracy to commit the offence of obtaining property under false pretence, the offences of obtaining property under pretence punishable under section 1 (3) of the AFFA OFROA, 2006 and as charged in Counts 2 – 7. The facts also show prima face case of forgery and using the documents mentioned in counts 8 and 9 against the 1st accused person. Consequently, I hereby grant the leave sought.

Signed

Hon. Justice M.T.M. Aliyu_Judge

29/02/16.

Salele: I urge court to read the charge to the accused persons.

Nana Ibrahim Senior Registrar affirmed to interpret from English to Hausa and vice versa. Section 242 CPC.

Court: Count 1 read and explained to both 1st and 3rd accused.

1st accused: I understand Count 1 of the charge. I am not guilty.

3rd accused: I understand. I am not guilty

Court: Count 2, obtaining property under false pretence, read and explained to the 2 accused persons.

Signed

Hon. Justice M.T.M. Aliyu_Judge

1st accused: I understand count 2 read and explained to me. I am not guilty.

3rd accused: I understand count 2. I am not guilty.

Court: Count 3 read and explained to both accused.

1st accused: I understand count 3 read and explained to me. I am not guilty.

3rd accused: I understand, I am not guilty.

Court: count 4 read and explained to both accused

1st accused: I understand the count I am not guilty.

3rd accused: I understand. I am not guilty.

Court: Count 5 read and explained to both accused

1st accused: I understand count 5 read and explained to me. I am not guilty.

3rd accused: I understand. I am not guilty.

Court: Count 6 read and explained to both accused.

1st accused: I understand count 6 read and explained to me. I am not guilty.

3rd accused: I understand the count I am not guilty

Court: count 7 read and explained to both accused.

1st accused: I understand count 7 read and explained to me. I am not guilty.

3rd accused: I understand I am not guilty.

Court: Count 8 read and explained to 1st accused

1st accused: I understand count 8 read and explained to me. I am not guilty.

Court: Count 9 read and explained to 1st accused.

1st accused: I understand count 9 read and explained to me. I am not guilty.

Salele: I apply for a date for hearing.

Didam: No objection

Audu: no objection. We however have a Motion on Notice dated 24/02/16
praying for the bail of the 3rd accused

Salele: We've been served with the application. We do not oppose the application.

Audu: I move my application in terms.

Court: The 3rd accused is admitted to bail in the sum of 1 Million and one surety in the like amount. The surey shall be a respectable person known in the community with the state. The matter is adjourned to 14/04/16 for Hearing.

Signed

Hon. Justice M.T.M. Aliyu_Judge

29/02/16.

11/05/16

Accused in prison custody

Nasiru Salale prosecution

G. Didam for 1st accused/applicant

Didam: We have a motion. It is for bail of the 1st accused/applicant. It is supported by a 17 paragraph affidavit. We rely on all paragraphs and submit that bail is the discretion of the court and section 19 of the Advance

Fee Fraud does not stipulate any limitation to the exercise of the discretion. However there are judicial consideration laid down. I refer to SULE V STATE (2007) ALLFWLR (pt. 346) 512 at 525 (A _ C). In bail application which is not related to a capital offence the accused is entitled to Bail and the burden is on prosecution to show why he should not be granted bail. SULE V STATE (Supra) at 527(F) – 528 (A). also BOLAKALE V STATE (2006) ALLFWLR (pt. 312) 2168 at 2177 (D – E) presumption of Innocence still applies guaranteed by Section 36 (5) of the Constitution.

Applicant has undertaken in paragraphs 9 – 13 not to escape from justice, interfere with investigation.

The respondent has filed a Counter Affidavit and stated that our Affidavit is misleading but no facts have been deposed to support that.

In paragraph 4(C) – (e) of the Counter Affidavit another case was refused to but we submit that other case is quite different with this other case.

In paragraph 4(f) of the counter affidavit it was deposed that if granted that the accused will abscond. There's no basis for that.

I urge court to exercise its discretion judiciously and judicially and admit the applicant to bail pending trial.

Salele: We oppose the application and have filed a 6 paragraph affidavit. We rely on all paragraph particularly on paragraphs 4 – 5. We submit that the case is bailable but there are conditions for granting bail.

One of the guiding principle content under section 341(2) of the CPC (b) and (c). the accused is a convict and there's serious risk of him committing another offence.

Courts normally refuse bail where prosecution for the offence is for higher magnitude. See MUSA & ORS V COP (2005) ALLFWLR (243) 766. We urge court to refuse the application.

Didam: Musa v cop

Court: Adjourned to 25/05/16 for Ruling

25/05/16

1st and 3rd accused in court

1st accused speak hausa and 3rd accused speaks English

Nana Ibrahim affirmed to interprete from English to Hausa and vice versa

Nasiru salele for prosecution

G. Didam with C.A. Abah for 1st accused

G.O. Akpuhva for 3rd accused with him P.Y. Garba

RULING

This is a Motion On Notice filed by the 1st defendant, applicant pursuant to Section 19 of the Advance Fee Fraud and Other Related Offence Act, section 341(2) of the CPC and Section 36(5) of the constitution Federal Republic of Nigeria 1999. The Motion prays for an order to admit the applicant to bail pending his trial.

The Motion which is dated April 2016 is supported by a 17 paragraph Affidavit. The respondent, in reaction to the Motion, filed a 6 paragraph Counter Affidavit.

Learned Counsel on both sides of the divide relied on the depositions. Mr. Didam of learned counsel for the applicant urged me to grant the application. Mr. Salele for the complainant/respondent urged me to refuse the application.

Arguing the merits of the application Mr. Didam submitted that Section 19 of the Advance Fee Fraud and Other Fraud Related Offence Act (hereafter called the Act) did not stipulate any limitation to the exercise discretion of the court. He cited SULE V STATE (2007) ALLFWLR (pt. 346) 512 at 525, 527 – 528 on the guiding principles for the exercise of the discretion to

grant or refuse bail and the submission that the burden of proof in all cases which are not capital offences is on the prosecution to show why the applicant should not be guaranteed bail. It was further argued that the applicant is entitled to the presumption of innocent. Further that the earlier case for which the applicant was convicted is quite different with the charge in this case and no basis was given in the counter affidavit to support the deposition that accused will abscond if admitted to bail. I urged to grant the application. Mr. Salale opposed the application and argued that because the applicant is a convict there's serious risk of hiM committing another offence. That courts usually refuse bail in respect of offences of higher magnitude – MUSA 7 ORS V COP(2005) ALLFWLR (pt. 243) 766. He urged me to refuse the application.

In support of the application the applicant deposed in paragraphs 2 – 15 of the Affidavit in support as follows:-

“2. That I am 39 years old and married with five children of school age

3. That before my arrest I was the sole bread winner of my family and doing property business with which I fed and catered for the whole family including providing education for my children.

4. That on the 23/7/2015 I was arraigned before thiscourt in charge No. KDH/KAD/4/2015 and convicted on my plea and sentenced to 15 months imprisonment for each of the 2 counts of the charge.
5. that the imprisonment terms of 15 months each were to run concurrently and since then I have been in prison custody and which imprisonment term will expire on the 20 – 5 – 2016 by the prison calendar.
6. that on the 29-2-2016 I was again arraigned in this case before this.....court on a 3 count charge for which I am presently standing trial
7. that on 29-2-2016 when I was arraigned in this case the 3rd accused was granted bail while I did not apply for and was not granted bail
8. that I did not apply for bail on the 29-2-2016 because I was already.....serving my sentence.....which term will expire on the 20-5-2016
9. that if I am granted bail with effect from the date I complete my prison sentence in charge No. KDH/KAD/4/2015 I will not temper with any investigation of this case or any other case against me.
10. that I will not interfere with my prosecution in this case or any other case and will attend my trial till judgment.

11. that I will not escape from justice and will provide adequate surety and abide by any condition that may be imposed for granting me bail.

12. that I am also to abide by the outcome of my prosecution in this case.

13. that if I am granted bail I will have free and adequate access to my counsel to enable me to properly defend myself In this case.

14. that my family is suffering untold hardship in this hard economic times as a result of my detention in prison custody since 20-7-2015.

15. that I have refunded the sum of N64,000,000 to ALHAJI IBRAHIM IDRIS after selling my house and before my arraignment in this case, being the part purchase price he paid to me for property No. 5 Kwato Road Ung. Rimi Kaduna.”

The facts relied upon by the respondent in opposition to the application are deposed to in paragraph 4(a) – (f) of the counter Affidavit. They are as follows:-

“(a) that the accused/applicant was arraigned and convictedon the 23rd day of July 2015 on two count charge.

b) that the term of imprisonment was for 15 months each which was to run concurrently

- c) that while the accused/applicant was being convicted, investigations based on another petition received by the commission were going on
- d) that the accused/applicant jumped the administrative bail that was granted to him by the respondents while investigations were on going before the arraignment of the previous case.
- e) that after the investigations were concluded, the accused was charged before the Kaduna State High Court and arraigned before this.....court on the 29th day of February 2016 together with others on a 9 count charge.
- f) that the accused/applicant having been convicted may abscond given the nature of the charge being filed against him in this court.
- g) that the accused/applicant having been convicted may abscond given the nature of the charge being filed against him in this court.
- g) that the accused is convicted in a similar case and as such is a serial offender.”

The accused/applicant is standing trial on a 9 count charge of criminal conspiracy and obtaining property by false pretence. Both offences, when established beyond reasonable doubt, are punishable with a mandatory

term of imprisonment of not less than 7 years under Sections 1(3) and 8 of the Advance Fee Fraud and Other Fraud Related offences Act 2006. By the provision of Section 341 (2) of the Criminal Procedure Code:-

“(2) Persons accused of an offence punishable with imprisonment for a term exceeding three years shall not ordinarily be released on bail; nevertheless the court may upon application release on bail a person accused as aforesaid if it considered:

- a) That by reason of the granting of bail, the proper investigation of the offence would not be prejudiced; and
- b) that no serious risk of the accused escaping from justice would be occasioned; and
- c) that no grounds exist for believing that the accused if released would commit an offence.”

As held in SULE V STATE (Supra) at 531 – 532 the discretion given to the judge under section 341(2) above is restricted. He is only to ascertain whether or not the stipulated conditions have been fulfilled. It is not for him to determine what those conditions are. The court further stated:-

“The three conditions are already stipulated. If he decides that the stipulated conditions have been fulfilled, then he has no option but to release the accused on bail.”

It is not in dispute that the applicant is presently serving a prison term in respect of an earlier conviction of a criminal offence in charge No. KDH/KAD/4/15. This fact was made very clear by the applicant in paragraphs 4 – 5 of the Affidavit in support. While the applicant in trying to satisfy the conditions in section 341(2) (a) and (b) of the CPC deposed to facts in paragraphs 9, 10 and 11 of his Affidavit in support to the effect that if he is released on bail he will not interfere with the investigation of the case and will not escape from justice, he failed to say anything about the likelihood of his committing an offence if he is to be released on bail. I think the circumstances of this case where the applicant has already been convicted for committing another offence makes it more likely that if he is released on bail in this case, he may commit another offence. The respondent in paragraph 4(g) of the Counter Affidavit had deposed to the effect that after he was convicted in a similar case, the applicant is a serial offender. The applicant did not counter this deposition and being regard to the facts and circumstances in this case, it is my humble view that grounds

exist to believe that the accused if released will commit an offence. I so hold and refuse the application.

Signed

Hon. Justice M.T.M. Aliyu_Judge

25/05/16.

Salele: The matter.....

.....

..... in evidence and shall be marked as Exhibit 1 and 2 respectively.

Signed

Hon. Justice M.T.M. Aliyu_Judge

25/05/16.

PW1 continue

I mentioned Deed of Assignment. I certified the Deed and my name and signature are on it. This is the CTC of the Deed.

Salele: I tender the CTC of the Deed of assignment in evidence.

Didam: no objection

Akpouwa: no objection

Court: The CTC of the Deed of Assignment between Col. A.M. Umar and Alh. Muhammed Shariff Ibrahim is admitted in evidence and shall be marked Exhibit 3.

Signed

Hon. Justice M.T.M. Aliyu __Judge

25/05/16.

Cross examination by Didam:-

I became the Director of Lands Admin on 28/05/15 and I retired 12/10/15. I was not the Director of Lands Admin when Exhibits 1, 2 and 3 were made.

I am aware of a letter of EFCC to my Ministry asking for Information on No 5 Kwato Road. I am aware of the response of my commissioner to the EFCC letter. We have a copy of the letter in our office.

I am not surprised that my Commissioner confirmed that C of O No. NC 921 is genuine and was raised in 1974 for 99 years. The Certificate is valid

till 2074. Exhibit 3 was based on C of O No. NC921. Anybody conducting search at the Ministry will discover that the Deed was duly registered.

Court: Exhibit 1 at 3rd to last paragraph read by the witness.

Signed

Hon. Justice M.T.M Aliyu_Judge

25/05/16.

Cross examination of PW1 continue

I don't know if processes were halted as stated in 3rd to last paragraph of exhibit 1. Only the Surveyor general can answer that. I am not aware that plot 5 Kwato road was exercised and a plot No. 3A was created. I am not aware of a case on No. Plot 3A Kwato Road before the High Court Kaduna. There was no Notice of Revocation of the C of O. No. NC 921. There was no other stating that Plot No 5A was sub-divided into 2.

Cross examination Akpovwa

I don't know who applied for the Assignment I don't know if it was the 3rd defendant who brought the application for arraignment to the Ministry of Lands. 3rd defendant is neither the Assignor nor the Assignee of Exhibit 3. Exhibit 3 was prepared by Barrister Y. Abdullahi.

The name "Barrister" was mentioned in Exhibit 2. The name of the Barrister was not stated. I certified Exhibits 1, 2 and 3 on 3rd March 2014 and 17/04/14 as Dep. Director Admin head of Deed Registry of the Ministry.

Both Exhibits 1 and 2 were prepared by the Surveyors General.

I was summoned to come and testified today by the EFCC through the Ministry of Lands, Surveyors and Country Planning. There's nothing in Exhibit 1 – 3 connecting 3rd defendant with the documents.

Reexamination: Nil

PW2, (m), Muslim, Affirmed, speaks English

My name is Lawal Balarabe, the Surveyor General of Kaduna State. I work with the Ministry of Lands, Surveys and Country Planning Kaduna State.

I signed Exhibits 1 and 2. I wrote the two letters.

The State CID wrote to the commissioner of lands requesting for certain information about the plot in question. The ministry wrote a letter to me to respond. Subsequently force CID Kaduna wrote that they have taken over investigation of the case and I was asked to give a Report which I did in Exhibit 2.

The 2 Reports were mere Replies (Exhibit 1 and 2).

The dispute was in respect of a piece of land in Kwato Road. My investigation show that the plot was exercised for plots 3 and 5 100 ft from each plots was exercised and numbered 3A. it was allocated first to Rivers State Government. It was revoked and allocated to Abduladir Abacha.

Court: last 3 paragraph of Exhibit 2 read by the witness

Signed

Hon. Justice M.T.M. Aliyu_Judge

25/05/16.

Cross examination by Didam

One of the Jobs of the Surveyor Generals office is to survey Lands to be. the lands department is responsible for land Allocation.

There's a file at the Ministry which shows that A.B Umar applied for plot 3A I have seen the evidence that the application was pro... and a C of O No. NC921 was issued to Lt. Col. A.B. Umar. I've never seen any document revoking the C of O No. NC 921.

No. 3 and 5 Kwato Road were plots of land adjacent to each other.

I remember one Abdulkadir Abacha who applied for an alternative land. Ministry of land excised part of No. 3 and part of No 5 to Rivers State Government later reallocated to Abacha.

Before the Police, Abdulkadir Abacha and Muhammed Shariff were disputing over plot No. 3^A Kwato Road.

I didn't see any document in the file notifying AB Umar that we are excising part of his land later there was a sub division of Plot No. 5 Kwato Road into 5 and 5A. I saw an application for sub – division but I did not see any notice of the Sub – Division to AB Umar as the Ministry does not give any Notice of Sub – Division.

Court: 3rd to last paragraph of Exhibit 1 read by the witness.

Signed

Hon. Justice M.T.M. Aliyu-Judge

PW2 continue

There has been no action taken on the file for a very long time but the C of O was issued to A.B. Umar but for 37 years no action was taken on the file. That was what I was refer to in 3rd to last paragraph of Exhibit 1.

Court: Exhibit 2 last page was read by the witness

Signed

Hon. Justice M.T.M. Aliyu_Judge

Cross examination of PW2 continue

There was C of O over the property. We have copies of C of Os issued. I don't know if there's a Deed of Assignment between A.B Umar and Muhammed Shariff. Such documents are outside my department. Exhibit 3 shows that it was registered in 2014.

The Deed was registered in 2010. I did not have the Deed in my custody. I was asked to make physical investigation of the matter and not to ask 1st defendant how he got the plot of land.

Cross examination by Akpovwa:-

I don't know the 3rd defendant. I never met him.

Reexamination: Nil

Salele: We apply for another date to call our other witnesses.

Didam: no objection

Akpovwa: no objection

Court: Adjourned to 24/06/16 for continuation of Hearing.

Signed

Hon. Justice M.T.M. Aliyu_Judge

25/05/16.

24/06/16

Both accused present, 1st accused speaks English

G. Didam for 1st accused

G.O. Akpovwa with P.Y. Garuba for 3rd accused

3rd accused speaks English

Snr. Reg.: We received letter from the Prosecution asking for adjournment

Didam: no objection. We agreed for the Motion to be taken on 27/06/16

Akpavwa: no objection

Court: The motion is adjourned to 17/06/16 for Hearing. The substantive suit is adjourned to 11/08/16 for continuation of hearing.

Signed

Hon. Justice M.T.M. Aliyu_Judge

24/06/16.

27/06/16

Parties absent

G. Didam for 1st accused/applicant

Didam: The matter is for hearing of Motion for bail of 1st applicant. My attention was drawn to a letter written by the prosecution for stand down to 12.00pm. I have no objection

Court: matter stood down to 12.00am

Signed

Hon. Justice M.T.M. Aliyu_Judge

Resumed 12.00 noon

Nasiru Salele for respondent

G. Didam for 1st accused, applicant

Didam: This is a Motion dated 06/06/16. It is a Motion On Notice brought under section 19 of the Advance Fee Fraud and Other Related Offence, Act, section 34 Rule (2) of the CPC and Section 36(5) of the CFRN 1999. It prays for an order admitting

1st accused to bail pending his trial and for such other order as the court may deem fit to make.

It is supported by a 20 paragraph Affidavit sworn to by the accused/applicant. We rely on all paragraphs particularly on paragraphs 2 – 19.

We submit that under Section 19 of the Advance Fee Fraud etc it is the sole discretion of the court to grant or refuse bail. However Section 341(2) of the CPC states conditions that must be met. We have averred an undertaking to fulfill the condition (paragraph 10).

The Courts have also provided some guidelines in considering applications for bail. I refer to SULE V STATE (2007) ALL FWLR (pt. 346) 512 at 525 (a – d).

The offences are punishable within maximum term of 20 years. The offences are therefore bailable. After meeting the conditions for bail, the prosecution has the onus to establish why the bail should not be granted. Prosecution has filed a Counter Affidavit. It expresses some fear of granting bail without any legal bases. It was deposed that applicant will likely interfere with investigation and no basis was given for the suspicion.

Also in paragraph 7(g) stated that 1st accused will abscond without basis. Trial has already commenced.

Paragraph 7(h) stated that if we are granted bail we will delay the case without saying how.

The depositions and fear in the Counter Affidavit can adequately taken care of by adequate sureties and conditions which the court can impose. We urge Court to discountenance the Counter Affidavit and grant applicant bail on conditions the court deem necessary.

Salele: We oppose the application and have filed 9 paragraph Counter Affidavit. We rely particularly on paragraphs 6 – 8. We submit that application is not to be granted as a matter of Right as the Court had earlier on heard a similar application and refused it. There must be cogent and compelling reasons to grant this one. There's nothing in the Affidavit in support to suggest cogent and compelling reasons to grant the applicant bail. We refer to *FAWEHINMA V STATE* (1990) NWLR (pt. 127) 486.

One of the important facts of determining bail is the possibility of the applicant not to escape justice. We deposed in paragraph 7(a) of the Counter Affidavit that applicant jumped bail while he was granted administrative bail and the deposition was never countered. I refer to

ABACHA V STATE (2002) 5 NWLR (pt. 761) 638. We urge Court to refuse the application.

Didam: Section 341(2) of the CPC provides what is compelling reasons. Ill health is not one of it but it is a factor to be considered. I refer to paragraph 11 of the Affidavit in support challenges the averment in paragraph 7(a) of Counter Affidavit.

Court: Adjourned to 25/07/16 for Ruling at 1.30pm.

Signed

Hon. Justice M.T.M. Aliyu_Judge

27/06/16

25/07/16

Accused in prison custody

Nasiru Salale for prosecution/respondent

G. Didam for 1st accused/applicant

RULING

The applicant filed this Motion for bail pending the determination of the Suit.

The Motion is supported by a 5 paragraph affidavit and a Written Address.

The respondent opposed the application by filing a 9 paragraph Counter Affidavit.

The application was argued by Counsel on both sides who rely on their respective affidavits. The learned counsel for the applicant urged me to grant the application arguing that no basis has been shown by the respondent who deposed that applicant is likely to jump bail or delay the hearing of the case. The learned prosecutor on his part argued that the application for bail is not a matter of right. The applicant had earlier on applied for bail and the court refused the application. Therefore, argued counsel there must be cogent and compelling reasons to grant bail to the accused person.

It is important to note that on 25/05/16 this court refused earlier application of the applicant for bail. The application was refused because he did not show that if he is released on bail he will not commit another offence. The court reasoned that the applicant who was then serving another term of imprisonment is likely to commit another offence if released on bail.

That is so because he did not deposed to facts to show that if released on bail he will not commit an offence.

In the present application, the applicant deposed that he will not commit a similar offence or any other offence at all. He also deposed that he will not jump bail or interfere with the investigation of the case. In paragraph 5 of the Affidavit the applicant also deposed that his prison term had expired on 20th May, 2016.

The respondent in paragraph 7 of the Counter Affidavit deposed that the applicant if released on bail will jump bail and also that he had committed an offence while on administrative bail. Further that the applicant if released on bail will interfere with investigation of the case.

I agree with learned counsel for the applicant that there's no evidence from the prosecution to prove that the applicant once jumped bail or that if released on bail he will interfere with investigation. The respondent did not depose to facts which are within its knowledge to prove these. However, having regard to the earlier holding of this court that the applicant did not show, in the application of 15/04/16 that he will not commit an offence if released on bail, the applicant to succeed, must show that this time around, there's no likelihood that he will commit an offence if released on bail. It is a fact that the accused was convicted and had served term of imprisonment in an earlier offence. The applicant should have annexed documents to show when the earlier offence was committed and when the present

offence was alleged to have been committed by him. He should depose to facts to satisfy the court that he will not commit an offence if he is released on bail. The facts in this case are clearly therefore distinguishable from the case in SULE V THE STATE (2007) ALLFWLR (pt. 346) 512 at 525. In the latter the applicant did not apply for bail while serving a prison term for committing a similar offence he is being charged with as in this instant case. Furthermore in the instant case the earlier application for bail was refused because the application did not meet of the requirements of Section 341(2) of CPC. The applicant, in my humble view, should do more than mere depose to facts that he will not commit similar or other offences if released on bail. He should do more than that having regard to the facts and circumstances of the present application. I am still not satisfied that the applicant has satisfied the conditions for bail and I refuse the application. The matter is adjourned to 06/10/16 and 7/10/16 for continuation of hearing.

Signed

Hon. Justice M.T.M. Aliyu_Judge

25/07/16.

06/10/16

3rd accused in court, speaks English

All other accused

Nasiru salale with Musa Isa for prosecution

G. Didam with C. Aba for 1st accused.

G. Akpavwa for 3rd defendant with him P.Y Garuba.

Salale: The matter is for continuation of hearing. The 1st accused is not in court. He's in prison custody and has not been produced due to prison Visit taking place presently at Kaduna Central Prison. We apply for another date. My witnesses are also not available for tomorrow and the witnesses we stated for tomorrow are going to be engaged.

Didam: no objection

Akpawwa: no objection we support 04/11/16 for continuation of hearing

Court: the matter is adjourned to 04/11/16 for continuation of hearing

Signed

Hon. Justice M.T.M. Aliyu-Judge

06/10/16.

24/10/16

Accused in prison custody

Nasiru salale prosecutor

G. Didam for accused with him T. Gora

Didam: we have a Motion dated 1st October 2016. We are ready.

Sallale: We are ready.

Didam: It is a Motion On Notice brought under Section 19 of AFF and OFROA, 341(2) of CPC, 36(5) of CFRN praying for bail of applicant pending trial and for such further orders. The application is supported by a 25 paragraph affidavit deposed to by applicant. We rely on all paragraphs and on exhibits 1 and 2. The Courts have held that bail is a right except in capital offences. I refer to SULE V STATE (2007) ALLFWLR (pt. 34) 512 at 525 (A – C), 527 (F), 528 (A) and BOLAKALE V STATE (2006) ALLFWLR (pt. 312) 2168 at 2177 (A – E). Under Section 341(2) of CPC the applicant has a duty to show that if granted bail, he will not interfere with investigation, jump bail and commit another offence.

The applicant has deposed to his redness to comply with all the conditions.

I rely on paragraphs 10 – 12, 15 and 16 of our Affidavit. In paragraph 17 he

undertook to provide Reliable sureties to guarantee his attendance. Trial in this case has commenced and 2 witnesses have testified prosecution has passed stage of investigation.

This is the 3rd application we made but the law does not stop us from coming back. Section 19 of the Act gives the Court absolute discretion in granting or refusing bail.

The respondent has filed a Counter Affidavit. The only special circumstance we need to show is to satisfy the conditions laid down in Section 341 (2) of CPC. No evidence has been show to support the allegation that accused jumped administrative bail.

In paragraph 13 of the Affidavit in support the applicant has denied the allegation.

We have shown the hardship applicant fairly is.

If granted bail the applicant will have access to counsel. We urge court to grant the application as prayed.

Salale: We oppose the application and have deposed to a 16 paragraph Counter Affidavit. We rely on all paragraphs. We submit that this Court on 16/05/16 dismissed a similar application and another application

was again refused on same reasons. We submit that application of this nature can be brought again even after another was refused but not without showing exceptional circumstances. That there was a new development after the refusal of the 1st application such as ill health.

In this case, the applicant has not satisfied the conditions under Section 341 (2) of CPC. It is an abuse of Court process. We urge court to refuse the application.

We refer to paragraph 8 of the Counter Claim.

It is clear that a similar offence to the one herein was committed by the accused.

The applicant has not satisfied any of the conditions under Section 341 (2) of the CPC and we urge court to refuse the application.

We refer to ABACHA V STATE (2002) 5 NWLR (pt. 761) 638 at 674 (B – C) and urge Court to refuse the application.

Didam: In the 1st application, the accused did not say he will not commit another offence, in the 2nd application. We did not attach documents we have now attached them.

On Section 35(1) (c) of the Constitution, section 36(5) of the constitution also presumed the innocence of the accused.

ABACHA V STATE is not tied to any principle of law. We urge court to disregard the objection.

Court: Adjourned to 04/11/16 for Ruling.

Signed

Hon. Justice M.T.M. Aliyu_Judge

24/10/16.

24/11/16

1st and 3rd accused in court

Both speaks English

G. Didam with T.M. Gora for 1st accused

G.O. Akpovwa for 3rd defendant with him P.Y. Goruba

Court: Ruling not ready. It is adjourned to 9/11/16.

Signed

Hon. Justice M.T.M. Aliyu_Judge

Snr. Reg. there's a letter from Prosecution for adjournment. He suggested 1st or 2nd December.

Didam: 1st December is ok

Akpovwa: The date is ok

Court: Adjourned to 1st December for continuation of Hearing.

Signed

Hon. Justice M.T.M Aliyu_Judge

04/11/16.

RULING

The applicant filed this motion for bail pending the determination of the suit. The motion is supported by a 25 paragraph affidavit. The respondents opposed by filing a 16 paragraph counter affidavit.

Learned counsel for the applicant urged the Court to grant the application arguing that all conditions stipulated in Sections 341(2) CPC have been met. That there is no basis for the respondents deposition that the applicant is likely to jump bail. Further, that the prosecution has not annexed any evidence to show that the accused jumped administrative bail.

The learned prosecutor argued that after refusing 2 earlier applications for bail, the applicant must show exceptional circumstances such as ill health. That the conditions under Section 341(2) of the CPC have not been satisfied. He urged me to yet again refuse the application.

It is pertinent to note here that on the 25/05/16 this Court refused an application for bail by the accused person because of his failure to show that if he is released on bail there is no likelihood of him committing another offence. On the 25/7/16 the accused filed a second application which was again refused because he could not support his deposition that he will not commit another offence when released. It was in reaction to this that the applicant now filed copy of the charge in KDH/KAD/4/EFCC/15 to show when the offences in that charge were committed by the applicant vis a vis the time the offences in the charge in this case were allegedly committed. The offences for which the applicant was convicted were committed around 16th October, 2010. The offences the applicant was charged in this case were committed between 2nd August 2010 and 21st September 2011. This shows that some of the offences alleged in the charge against the applicant herein were committed after the offences in KDH/KAD/4/EFCC/15 were committed.

It is also clear from the Judgment of the Court in the earlier case that the applicant was convicted for forgery and using as genuine forged documents. In the instant case, the applicant is facing a number of counts of charge including forgery and using as genuine forged documents. I therefore agree with the learned prosecutor that the applicant to succeed must show some exceptional circumstances to warrant his admission to bail. The documents annexed show that the crime alleged in this case was committed after the offence in KDH/KAD/4/EFCC/15. I am afraid the documents annexed by the applicant have not shown this exceptional circumstance to admit the applicant to bail. In my humble view having failed in the 1st application to satisfy the condition in Section 431(2) that if released on bail he will not commit another offence it is an afterthought for him to state in subsequent applications without supporting the claim with facts that would satisfy the Court that he would indeed not commit another offence. For the third time, the application of the applicant is hereby refused.

Signed

Hon. Justice M.T.M. Aliyu_Judge

09/11/2016