

IN THE HIGH COURT OF JUSTICE
OYO STATE OF NIGERIA
IN THE IBADAN JUDICIAL DIVISION
HOLDEN AT IBADAN

BEFORE THE HONOURABLE JUSTICE J.O. IGE - JUDGE

THIS WEDNESDAY THE 13TH DAY OF NOVEMBER, 2002

BETWEEN: SUIT NO: M/563/2002
MR. RAIFU ODEDIRAN & 3 ORS :::: APPLICANTS
AND
C.O.P. & 1 OR. :::: COMPLAINANTS/RESPONDENTS

Mr. M. Oladejo for the Applicants. (With him is Mr. Alaka.)
Mrs. O. Ajala Senior Legal Officer for the Respondents.

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R U L I N G

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This is an application for bail in respect of an offence under the Advance Fee Fraud and Other Related Offences Decree No. 13 of 1995 as amended which Law makes special provisions for the terms and conditions/imposed for bail. The issue raised in the application is whether the imposition of the said terms and conditions is mandatory.

The Applicants were arraigned before the Chief Magistrate Court on 5/11/02 on the two Counts of obtaining money under false pretences and obtaining the sum of N1.177 million with intent to defraud contrary to the provisions of Section 8(a) and 1(a) of the Advance Fee Fraud and Other Related Offences Decree No. 13 1995 as amended. The learned Chief Magistrate having declined jurisdiction on the matter ordered that the Applicants should be remanded at New Gbagi Market Police Station, Ibadan.

The present Application is for an order admitting the Applicants herein to bail. The application is brought pursuant to the provisions of Section 18(1) of the Advance Fee Fraud Decree and supported by two Affidavits, namely an Affidavit of Urgency of 9 paragraphs and an Affidavit in support of the Summons of 11 paragraphs both of which are deposed to by one Rabiul Olusuyi Bello a Legal Officer at First Bank of Nigeria PLC, West Banking

Operations Unit, Challenge Ibadan. The 1st Applicant was the Orita Challenge Branch Accountant of the First Bank Plc at the material time while the 2nd Applicant was an Officer at the branch then. The 3rd and 4th Applicants were then the Cashier and Branch Manager of the Bank at Ogbomoso respectively at the material time. All of them had one thing or the other to do with the issuance of the two Bank Drafts of ₦500,000.00 on each occasion in respect of which drafts the Applicants have been charged to court.

The respondents did not file any Counter-Affidavit and as a matter of fact, Mrs. O. Ajala Senior Legal Officer who appeared for the State informed the court that she was not opposing the Application.

Moving the motion Mr. Oladepo learned Counsel for the Applicants having referred to the averments in the two affidavits urged the court to grant the application and admit the applicants to bail on liberal terms. It was his contention that the court has a discretion to grant bail on terms different from those stipulated in the Decree.

The facts relied upon by the Applicants to sustain this application are basically contained in paragraph 7 (a - a) of the Affidavit in Support. For their purport and significance they are reproduced hereunder as follows:

- "7 a. That sometimes in January 1999, the Complainant Miss Felicia Olenisa applied for a Bank Draft for the sum of ₦500,000.00 to be issued in favour of Mr. Salawu Oduola, the owner of a building that the complainant said she wanted to buy and that the draft should be made payable at Ogbomoso Branch of the 1st Bank of Nigeria Plc.
- b. That the complainant said that she had negotiated with the owner Mr. Salawu Oduola who was introduced to her by the 1st Accused person, i.e Mr. Owolabi Amule and Musa Aremu now at large.

- c. That the complainant's application for Draft was approved and the draft was finally issued to the complainant who signed the despatch note acknowledging the receipt of the draft.
- d. That the draft was accordingly presented and cashed by the Drawee, i.e. Salawu Oduola at Ogbomoso Branch of the 1st Bank of Nig. Plc.
- e. That a month thereafter, i.e. February 1999, the complainant also applied in writing for the issuance of another Bank draft for the sum of ₦500,000.00 in favour of Mr. Salawu Oduola and payable at Ogbomoso.
- f. That the complainant said that the amount was for the balance purchase price of the house she wanted to buy from Salawu Oduola.
- g. That the Bank issued the draft as requested and the complainant collected same after signing necessary dispatch book.
- h. That the draft was later presented for cashment by the Drawee who collected the value sum after proper identification.
- i. That about 3 months later, the complainant came back to the Bank that she had been duped by Mr. Salawu Oduola and that the house he presented to her was not his property and that the officers of the Bank should help to track him down.
- j. That the complainant later reported the matter to Alagbon Police Station Lagos and the officer there came to arrest the 1st applicant who was then the Accountant at Orita Challenge Branch, the 2nd Applicant an officer at Orita Challenge Branch then, 3rd applicant the cashier at Ogbomoso Branch and the 4th applicant, the Branch Manager at Ogbomoso Branch.
- k. That the police also arrested, the 1st Accused Owolabi Amule and one Musa Aremu whom the complainant said were

the agents that introduced Mr. Salawu Oduola to her.

1. That after necessary investigation the Accused persons were released on bail with instruction to be reporting at the Police Station at subsequent date to be fixed by the police.
- m. That sometimes in year 2000, the police at Alagbon also threatened to charge the Accused persons to court in Lagos and after much protest that the whole incident occurred in Oyo State, the Accused persons were allowed to go.
- n. That on 5th November 2002, the Applicants and one Owolabi Amule were arraigned at Chief Magistrate Court No.1 Iyaganku, Ibadan on a 2 count charge of conspiracy to commit felony and obtaining by false pretence contrary to and punishable under Sections 8(a), 1(3) and 1(a) of the Advance Fee Fraud and other fraud related offences Decree No. 13, 1995 as amended."

Since the abrogation of the ~~Miscellaneous Offences Tribunals~~ ^{the jurisdiction} on the inception of the present Civilian Administration ~~hitherto~~ exercised by the Tribunals have now been vested in the High Courts of the State as well as the Federal High Court - See Tribunals (Certain Consequential) Amendments (etc) Decree No. 62 of 1999 which amended the provisions of Sections 12 and 18 of the Advance Fee Fraud and Other Related Offences Decree 1995 by substituting the following new Sections 12 and 18 as follows:

"12 (1) The High Court of the State concerned shall have exclusive jurisdiction to try offences under this Decree

18(1) The High Court of the State concerned shall have power to grant bail to an Accused person charged with an offence under this Decree or any other law liable by the High Court of the State concerned upon such terms and conditions as the High Court of the State concerned may

deem fit including :-

- (a) The payment of deposit of ~~one~~ quarter of the amount of money involved in the offence.
- (b) The provision of a Surety or such number of sureties who shall deposit adequate security for the balance of the amount involved in the offence; and
- (c) The handing over of his passport to the High Court of the State concerned for the amount of the bail"

The foregoing terms and conditions are the prescribed conditions and terms under which any person accused of an offence under the Advance Fee Fraud and Other Related Offences Decree 1995 can be admitted to bail pending trial. A similar stipulation as to the terms and conditions of bail is provided for offenders under the Failed Banks (Recovery of Debts) and Financial Malpractices in Banks Decree 1994.

Having made reference to the relevant Statutory provisions regulating the terms and conditions of bail in the instant case, it then behoves this court to consider the question whether or not the imposition of the said terms and conditions is mandatory in every case. That issue has been a matter of dispute for sometime now, but the issue appears to have been laid to rest in the following two recent cases of the Court of Appeal in which the question of the interpretation of Section 18(1)(A) (B) and (C) of Advance Fee Fraud ^{Decree} was extensively discussed and considered and fortunately the two cases emanated from the Enugu Division of the Court of Appeal. The first case is that of Ignatius Udeh Vs. The Federal Republic of Nigeria (2001) 5 NWLR (Pt.706) 312 and the second is Emeka Ekwenugo Vs. The Federal Republic of Nigeria & Or. (2001) 6 NWLR (Pt.708) 171. The unanimous decision of the Court in the two cases is that the provision of the Decree, that is Section 18(1) (a) (b) and (c) earlier quoted are not mandatory. Having quoted the provisions of that Section in the Ignatius Udeh's case this is what Muhammed JCA said at page 324 of the judgment:-

"The words which make the law under review in the present appeal admit of no ambiguity. In dealing with these clear and unambiguous words, grammatical meaning ascribable to them must be allowed to freely reign. It should then be the understanding of a Court dealing with Section 18(1)(a) (b) and (c) that a court before which an Accused for the offences under the Decree is arraigned has the powers to grant bail upon such terms as the Court may deem fit. The totality of the terms and conditions which the court is to consider INCLUDE THOSE TERMS conveyed by paragraphs (a) (b) and (c) to Section 18(1). The terms stipulated in paragraphs (a) (b) and (c) are among and by such taken make or form part of the comprehensive set of terms and conditions which the court is at liberty to consider and impose. Whether or not a Court imposes the provision of these paragraphs depends on the facts of the given case under consideration/^{I am} of the firm view that the trial Court had unfettered discretion as to whether or not to impose these specified terms in the course of admitting the Appellant to bail. Once the clear and unambiguous words employed by the Statute under review are given their plain and grammatical meaning, their permissive imposition irresistibly fall into place. The Court below was certainly in error to have concluded that the terms and conditions stipulated by Section 18(1)(a) (b) & (c) were mandatory and the court's imposition of these requirements on the Appellant was a necessity."

Since the offence for which the Applicants are arraigned is bailable, and there being no reason why the court's discretion should not be exercised in their favour based on the materials

before the court, I am of the firm view that this application deserves to succeed, and is accordingly granted. However in considering what terms and conditions to impose for bail, I take into consideration the peculiar facts and circumstances of this case, and being guided by the decisions to which I have alluded to, that is that the provisions of Section 18(1) (a) (b) and (c) of the Advance Fee Fraud Decree is not mandatory, it is hereby ordered that each of the applicants shall be admitted to bail in the following terms and conditions:-

- (i) ₦100,000 with 1 (one) Surety in like sum
- (ii) The Surety who should be resident within the jurisdiction of this court must furnish satisfactory evidence of ownership of developed landed property any where within the jurisdiction of this court such landed property not to be encumbered in any way.
- (iii) The Surety must also swear to an affidavit as to his means.
- (iv) Pending their arraignment before this court, each of the applicants shall report to the Investigating Police Officer in charge of this case at least once monthly.

The order granted herein shall lapse automatically the moment there is a breach of any of its terms.



HON. JUSTICE J.C. IGE

JUDGE.

13/11/2002.