

IN THE HIGH COURT OF FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT VACATION COURT 2, NYANYA, ABUJA

SUIT NO. FCT/HC/CR/464/19
 Motion No.FCT/HC/ M/8521/19

BEFORE HIS LORDSHIP:

HON. JUSTICE MUAWIYAH BABA IDRIS

BETWEEN

FEDERAL REPUBLIC OF NIGERIA **COMPLAINANT**

AND

BABAGANA ABBA DALORI **DEFENDANT**

09/09/2019

Defendant in Court. He understands English language

RULING

Motion No. M/8521/19 prays for the following:

1. AN ORDER of this Honourable court admitting the 1st defendant/ Applicant to bail pending his trial before this Honourable court.
2. AND FOR such further order (s) as this Honourable court may deem fit to make in the circumstance

The motion is supported by a 10 paragraph affidavit deposed to by one Madu Gashi. 6 exhibits are attached and marked Exhs. ABD1-5. Learned counsel filed a written address.

The complainant/Respondent filed a counter affidavit of 32 paragraphs deposed to by one Kolawole Mukail. Exhs. EFCC 1-4 are attached.

I have read the written addresses of the parties

Learned counsel for the Applicant raised the following issue for determination:

“Whether considering the pending charge and facts and circumstances of this case, the applicant is entitled to bail.”

The respondent’s learned counsel raised the following issue:

Whether the Defendants/ Applicants are entitled to the exercise of the discretion of this Honourable court in their favour in the circumstance of this case.

The two issues above are similar:

Relying on s.36(5) of the CFRN 1999 as amended and the case of **ANTAI VS. FRN (2016) LPERLR-41404** Learned counsel for the Applicant argued that the Defendant is presumed innocent until he is proved guilty.

It is further argued that by S.162 ACJA 2015 the offence with which the defendant/Applicant is charge is bailable.

It is further submitted that the applicant extreme health challenges call for the exercise of this court's discretion. Paragraph 5 (r) & (s) of the affidavit in support of the application and the cases of **BAMAIYI VS. STATE (2001) 8 NWLR (PT 715) 270** and **OLATUNJI VS. FRN (2003) 3 NWLR (PT.807) 406** were referred to learned counsel further referred to S.36(6) (b) of the CFRN 1999 as amended.

This court is urged to admit the applicant to bail.

Learned counsel for the complainant submitted that though the court has unfettered discretion to grant bail, such discretion shall be exercised judicially and judiciously. Relying on S.162 ACJA learned counsel urged the court to refuse the bail application in the light of the exhibits attached to the counter affidavit in opposition of the bail application. The case of **DANBABA VS. STATE (2000) 14 NWLR (PT.687)390** was referred.

On the health condition of the 1st Defendant/Applicant learned counsel argued that it is not supported by any medical report. It was finally submitted by the learned prosecution counsel that the fact that the offence is bailable does not automatically entitled the defendant for bail. Reliance placed on S.35(1) (c) of the 1999 CFRN as amended and the case of **EKWENUGO VS. FRN (2001)6 NWLR (PT.705) 193**. Learned counsel urged the court to refused the application.

The trite law is that grant of bail to an accused charged with a felony is purely within the discretion any powers of the court to be exercised judicially and judiciously taking into consideration facts and circumstances of a given case.

The new regime in respect of bail application place the burden on the prosecution to prove that a defendant is not entitled to bail.

The averment at the paragraph 5 (l) of the affidavit in support that the EFCC agents threatened to continue to arrest the Applicant is not backed with any material evidence.

The Applicant claims to have extreme health condition. I agree with the learned counsel for the complainant that there is no medical report to support the averment. The law is that for a bail to be granted on ground of ill health, medical

report must be presented to the Court. Exh. ABD 6 is a letter to the commission and not a medical report.

It is the argument of learned senior counsel for the applicant that the business transaction is purely civil and there is nothing criminal in the transaction. The case before the Court is not a civil matter. It is a criminal charge based on petitions received by the EFCC. Exh. EFCC 3 shows that these petitions are alleged bordering on criminal breach of trust, obtaining money by false pretense, fraud and misrepresentation. All these are crimes that are based on civil transaction.

The Court cannot ignore Exhs. EFCC 1a & 1b and EFCC 2. These exhibits are indication that the case for which the Applicant is being tried is not purely civil.

S. 162 (1) ACJA provides:

“A defendant charged with an offence punishable with imprisonment for a term exceeding three years shall on application to Court, be released on bail except in the following circumstances.

- a) Where there is reasonable ground to believe that the defendant will, where released 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;
- f) Undermine or jeopardize the objective or purpose of the functioning of the criminal justice administrations including the bail system.

In the case of **SALAMI IBRAHIM vs. FRN (2016) LPELR - 41934 (CA)** the Court of Appeal held that:

“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, 2015.”

The complainant at paragraph 5n, o & s of the counter affidavit show that the Applicant after obtaining money from people used the money to buy personal houses for himself in different location in Abuja. Exh. EFCC 2, acres of land in Kuje and there are about 140 petitions against the defendants in this case.

The Applicant has not countered the averments in paragraph 5n, o & s. Failure to file further affidavit to counter the averment in paragraph 5n, o & s left the counter affidavit of the Respondent unchallenged.

The exception under 162 (1) (d) is with regard to concealment or destruction of evidence. Paragraph 5i of the counter affidavit states that the defendants after collecting money from investors, invested the money in Forex business and thereafter moved the money to another unknown location.

Exh. EFCC 1b is a statement of one Akinyele Abiola, a Forex market Employee is referred.

The above averment too is not countered. Therefore, it is deemed admitted. In the case of **ANAKPE & ANOR vs. A-G FEDERATION (2018) LPELR CA/E/357/14** It was held:

"it is trite that failure to swear to a further affidavit, where there is a counter affidavit, which is unchallenged, it is deemed that the counter affidavit is admitted as being correct."

Therefore, the complainant/Respondent has discharged the burden place on it by S. 162 (1) ACJA.

The purpose of the ACJA as provided for in S. 1 (1) includes protection of the rights and interests of the suspect, the defendant and the victim.

It is my humble view that in order to protect the rights and interest of the victims it behoves this Court to allow for full scale investigation in the case to address the legitimate complaints of thousands of investors.

In the light of the above consideration the application is refused. The complainant is ordered to conclude investigation in respect of the case within two months from today. The applicant shall remain in custody of the EFCC.



Hon. Justice Muawiyah Baba Idris

Presiding Judge

9/9/19

APPEARANCES

Maryam Aminu Ahmed Esq. with Maryam Hayatuddeen Esq. and Bamidele Akamade Esq. for the prosecution.

D.D. Dimas Esq. with Tracy Inegbenosun Esq. for the Defendant/Applicant.