IN THE HIGH COURT OF EKITI STATE OF NIGERIA
IN THE ADO-EKITI JUDICIAL DIVISION
SITTING AT ADO-EKITI
THIS TUESDAY THE 11TH DAY OF DECEMBER,2018.
BEFORE HIS LORDSHIP HON.JUSTICE A.L OGUNMOYE

CHARGE NO: HAD/64C/2018

MOTION NO:HAD/119C/2018

BELLO NA'ALLAH YABO
A.K.A IMRANA VENTURES **DEFENDANT/ APPLICANT**

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

RULING

This is a Summons for Bail brought to Sections 158 and 163 of the Administration of Criminal Justice Act ,2015, Section 36(5) Constitution of the Federal Republic of Nigeria, 1999 and the inherent jurisdiction of this Honourable . It was for the bail of the applicant pending the determination of the case against him.

The Application was supported with an eight paragraph affidavit the gists of which were that on 27th September 2017, the applicant was at the office of the EFCC on the invitation of the latter. He was interrogated and made to write a statement after which he was granted administrative bail. The applicant presented a Federal Civil Servant on Grade Level 15 who stood surety for him. He was granted administrative bail over a year ago and had since then visited the EFCC office on more than ten occasions. The applicant, who was a Deputy Director with the Ministry of Police Affairs, would not jump bail and the person who stood surety for him earlier was ready to continue as his surety. The offences for which the applicant was charged was bailable and he would not interfere with further investigations . It would be in the interest of justice to grant him bail.

In his written address, the learned senior counsel to the applicant submitted that the grant or refusal of application for bail is at the discretion of the court which must be exercised both judicially and judiciously. It was submitted that there are laid down

principles for consideration and which an applicant ought to satisfy before the discretion of the court could be exercised in his favour. It was submitted that the principles, which were by no means exhaustive, were as laid down in BAMAIYI VS THE STATE (2001) FWLR (PT. 460) 956 AT 984 PARAS B-D and several cases. It was submitted that the above listed criteria are viewed liberally when considering an application for bail pending trial in that the presumption of innocence enures in favour of the accused. Reliance was placed on section 36 (5) Constitution of the Federal Republic of Nigeria 1999 ,ABACHA V THE STATE (2002) FWLR (PART 98) 863 AT 880 and other cases .It was submitted that the general rule is that a person who has not been tried and convicted by a competent court for an offence known to the law is entitled to be admitted to bail as a matter of course, unless some circumstances militate against his admission to bail. It was submitted that there was no circumstance militating against the admission of the applicant to bail .

As to the nature and gravity of the offence against the defendant, it was submitted that the charge against him at this stage of the proceedings were nothing but mere allegations. As to the evidence available, it was submitted that the evidence available in the proof of evidence was weak to sustain a conviction. As to the availability of the defendant to face trial, it was submitted that he would be available to face his trial and there was nothing against him suggesting otherwise. It was submitted that the defendant had indicated that the person who stood surety for him when he was granted administrative bail by EFCC was still willing to stand as surety for him. Reliance was placed on ARIYO V C.O.P (1989) I CLRN 289 AT 290 while submitting that the purpose of restraint before trial is to ensure the attendance of the accused at the trial. As to the likelihood of the defendant committing an offence, it was submitted that the applicant if granted bail will not commit any other offence. As to the likelihood of the defendant interfering with the course of justice, it was submitted that the applicant could not even interfere with the course of justice in this case having been on administrative bail for more than one year. As to the criminal antecedents of the defendant, it was submitted that apart from the present case, he was not known to have any criminal record . As to the likelihood of a further charge against the defendant, it was submitted that he was not likely to be charged with any further charge. As to the detention of the defendant for his protection, it was

submitted that his was not in any way threatened so as to be kept in a protective custody. As to the health of the defendant, it was submitted that that his health was fundamental to the trial and that proper medical attention was not obtainable in detention.

It was submitted that the applicant was detained upon his arrest in EFCC custody for over two weeks before he was arraigned and his further detention would be against the interest of justice .It was submitted that the onus was on the Prosecution to show why bail should not be granted to the applicant, more so, when he was charged with a bailable offence. It was submitted that the law presumes in favour of the liberty of the applicant and his innocence until the Court holds otherwise. Reliance was placed on UDEH V FEDERAL REPUBLIC OF NIGERIA (2011) FWLR (PT 61) 1734 @ 1748 PARA. E another case.

It was submitted that the applicant was granted administrative bail by the Economic and Financial Crimes Commission and the applicant had all along made himself available whenever requested to do so. It was submitted that the release on administrative bail was consistent with the constitutional presumption of innocence. It was submitted that the applicant was asked to provide a surety on GL15 and it was made available. Reliance was placed on Section 115, 116 and 118 of the Ekiti State Administration of Criminal Justice Law, 2014. I was urged to grant the application.

Opposing the applicant on point of law, Mr. Chia-Yakua submitted that the applicant had not placed any material before the court upon which the request could be based. It was submitted that there was no competent application in support of the application to enable the court exercise its discretion judiciously and judiciously. It was submitted that the deponent was a legal practitioner and the stamp and seal of the said Olarewaju was not in the affidavit . It was submitted that where an affidavit is deposed to by a legal practitioner, it must be accompanied with the stamp and seal. Reliance was placed on NPC. V. CTPN (Ltd) 2018 16 NWLR (Pt. 1645) 289 at 292 Ratio. It was submitted that the failure to affix the stamp and seal was a violation of the Legal Practitioners Act which was an Act of the National Assembly.

It was submitted that the respondent did not file a counter affidavit because there was nothing before the court to counter in that the affidavit was not competently before the court. It was submitted that the rule that an unchallenged averment must be countenanced by the court had exceptions . Reliance was placed on Law and Evidence in Nigeria Vol 2 2nd edition by S.T. Hon at page 1085 paragraph B, AKWA V, C.O.P (2003) FWLR (Pt. 149) 1488 and EGBUGARA V. NCC (2007) All FWLR (Pt 361) 1788 at 1922. It was therefore submitted that there were no indices before the court to weigh the factors that would guide the court in exercising its discretion. It was submitted that the applicant had failed to comply with the law and the court was expected to come to the rescue of the law by refusing the application. It was submitted that presumption of innocence was not absolute in that Section 35(b) of the Constitution imposed on obligation on the applicant which he had failed to do. I was urged to refuse the application and make an order for accelarited hearing r.

Replying on point of law, learned senior counsel placed reliance on YAKI.V. BAGUDU (2015) ALL FWLLR, (PT 810) 1025 to the effect that the absence of a seal on a document would not void it. It was contended that the absence of a seal on the affidavit did not render it incompetent in that the counsel who prepared the application attached his stamp and seal. Reliance was placed on Sections 113 and 114 of the Evidence Act, 2011 which permits the use of a defective affidavit but that the affidavit was not even defective. It was submitted that under the Ekiti State Administration of Criminal Justice Law, an application for bail could be made orally and that same was consistent with the view of the court in ABIOLA V. FRN (1995) 7 NWLR (Pt. 455) 155. It was submitted that the defendant in ABIOLA V FRN was charged with a capital offence and the court still held that the application could be made orally. It was submitted that the defendant was charged with stealing which was ordinarily bailable. It was submitted that the admission that the defendant was admitted to bail was an admission against interest. It was submitted that the presumption of innocence do not reduce either before or after arraignment. I was urged once again to grant the application.

Now, section 10 of the Rules of Professional Conduct 2007 provides :

"10(1) A lawyer acting in his capacity as a legal practitioner, legal officer or adviser of any Governmental department or Ministry of any corporation, shall not sign or file a legal document unless there is affixed on any such document seal and stamp approved by the Nigerian Bar Association.

(2) For the purpose of this rule," Legal documents " shall include pleadings, affidavits, depositions ,applications, instruments, agreements, deed letters, memoranda , report, legal opinions or any similar documents."

The legal status of the rules of professional conduct in the legal profession made by the General Council of the Bar pursuant to Section 1 of the Legal Practitioners Act, Laws of the Federation of Nigeria 2004 is that of a subsidiary legislation since it is made by provision in a statutory enactment. See **YAKI & ANOR v. BAGUDU & ORS (2015) LPELR-25721(SC)** Per ONNOGHEN, J.S.C. (Pp. 11-12, Paras. E-A). A look at the bail application would reveal that same was signed by .A N Salau esq and his stamp and seal was affixed thereto .However, the affidavit in support of the application was deposed to by Olanrewaju Olatunji a legal practitioner . The said deponent however failed to affix his stamp and seal to the said affidavit. What is the effect of failure to affix the approved seal and stamp of the Nigerian Bar Association on a legal document? It has been held that the failure to affix the approved seal and stamp of the NBA on a process does not render the process null and void and that same is an irregularity that can be cured by an application for extension of time and a deeming order. See **WIKE EZENWO NYESOM v. HON. (DR.) DAKUKU ADOL PETERSIDE & ORS(2016) LPELR-40036(SC)** Per KUDIRAT MOTONMORI OLATOKUNBO KEKERE-EKUN ,J.S.C (P. 35, paras. B-D).In **BARRISTER CLIFFORD NNANTA CHUKU v. MR. NICHOLAS KALIO(2018) LPELR-44867(CA)** Per BITRUS GYARAZAMA SANGA ,J.C.A (Pp. 11-14, para. D), the Court of Appeal had this to say on the issue:

".....Upon considering the holding by the Supreme Court on legal document not sealed by seal of learned counsel who filed same before a Court, that it is not null and void or incompetent but it is deemed not to have been properly signed or filed as the condition precedent to its proper signing and filing had not been met. In this Court on several occasions when the issue arose we stood down

the appeal and allow counsel to go to the registry to put his seal on all the processes he filed and sign them....."

The learned senior counsel to the applicant had applied to affix the stamp and seal of the counsel who deposed to the affidavit . I believe therefore that the applicant had fulfilled all righteousness with regards to the issue of stamp and seal. The application is therefore competently before me with a supporting affidavit. The averments in the affidavit were not challenged .It is however still incumbent on me to study same to see if the averments would justify the prayers being sought.

Now, the main function of bail is to ensure the presence of the defendant at the trial. See **DOKUBO-ASARI V. FRN (2007) LPELR-958(SC) Per TOBI, J.S.C.(P. 41, para. E).**The applicant was charged with stealing .Section 115(2) of the Ekiti State Administration of Criminal Justice Law 2014, provides that where a person is charged with any felony other than a felony punishable with death, the court may, if it thinks fit, admit him to bail. It follows therefore that I have the discretion whether or not to admit the applicant to bail. In the exercise of the discretion on whether or not to grant bail pending trial, the guiding principles are :(1) Nature of the charge;(2) The severity of the punishment; (3) The character of the evidence;(4) The criminal record of the applicant and (5) The likelihood of the repetition of the offence. See **OGBHEMHE V. C.O.P. (2000) 19 W.R.N. 46.** The court has in most cases, discretion to admit a defendant to bail pending trial, but in the exercise of the discretion, the nature of the charge, the evidence by which it is supported, the sentence which by law may be passed in the event of conviction, the probability that the applicant will appear to take his trial, are the most important ingredients for the guidance of the court.

I have carefully considered the affidavit evidence before me .The applicant was charged in counts 1-13 with stealing huge sums of money. The severity of the offences, if convicted, was therefore not in doubt though it is not capital in nature. The likelihood of jumping bail in view of the severity of the offence is accordingly high. However, since the essence of bail is to ensure the attendance of the defendant to face his trial in that he is presumed innocent until proved otherwise and having earlier enjoyed administrative bail grated by the respondent,I believe that the justice of the matter would warrant that I exercise my discretion in favour of the applicant.

Accordingly, bail is here by granted in the sum of N10,000,000:00 with two sureties in like sum . One of the sureties must be a Federal civil servant not below Grade Level 15 .The applicant is also to deposit his international passport.

HON.JUSTICE A.L OGUNMOYE

JUDGE

11TH DECEMBER , 2018.

APPEARANCES:

Y.C Maikyau,SAN.With him Wole Agunbidade ,SAN and A.N Salau for the applicant .

Chia- Yakua for the respondent .