IN THE HIGH COURT OF EKITI STATE OF NIGERIA
IN THE ADO-EKITI JUDICIAL DIVISION
SITTING AT ADO-EKITI
THIS MONDAY THE 28TH DAY OF MAY,2018
BEFORE HIS LORDSHIP HON.JUSTICE A.L OGUNMOYE

CHARGE NO: HAD/32C/2018

MOTION NO:HAD/278M/2018

EBENEZER ADEOLU LONGE DEFENDANT/APPLICANT
AND

FEDERAL REPUBLIC OF NIGERIA COMPLAINANT/RESPONDENT

RULING

This is a motion for bail brought pursuant to Sections 35 (1) 35(3) (35) (4) (a) 35(5) and 36(5) of the 1999 Constitution of the Federal Republic of Nigeria, Section 115(2) of the Administration of Criminal Justice Law of Ekiti State 2014 and under the inherent power of this court praying for an order admitting the applicant to bail on a liberal term.

The application was supported by an 11 paragraph affidavit. The gist of the averments were that the applicant voluntarily resigned from Sterling Bank Plc, Ado Ekiti branch sometimes in December 2017 to join the family business of his father-in-law at Ore, Ondo State and also to be able to pay more attention to his sick and pregnant wife .He was surprised when men of the Economic and Financial Crimes Commission came to arrest him at home on the allegation that he stole some deposits made through him while still in the bank. His request to see the alleged tellers with which the alleged deposits were made was not honoured nor were his request in respect of the customers involved but was rather threatened by operatives of the Economic and Financial Crimes Commission. Some people were using the EFCC to destroy him .The investigation team led by one Ambrose Ngwu served the applicant with a bail condition but deliberately refused to consider the sureties presented . Ambrose Ngwu always come to threaten him with imprisonment unless he brings some money. He had been locked up in cell and had fallen seriously sick .It was necessary that he be granted bail to enable him attend to his medical condition. He would provide responsible sureties if

granted bail, attend court proceedings and would not engage in the commission of any offence .

In opposing the application, the respondent placed reliance on a 20 paragraph counter affidavit the gists of which were that contrary to the depositions at paragraph 8d of the affidavit in support of summons for bail, the applicant was confronted with his statement of account where he suppressed customers' fund and the petition containing the allegation against him. The respondent obtained valid court order to detain the applicant beyond 24 hours guaranteed by law and he was charged before a competent court while the court order subsists. Mr. Ambrose Ngwu did not threaten the applicant but only visited him at the detention facility to obtain information from him pertaining to the investigation. The applicant would abuse the bail process if granted bail by suppressing evidence and interfere with prosecution witness who were mostly his former colleagues and would not provide reliable surety to stand for him if granted bail. The applicant did not suffer from any illness throughout his detention at EFCC custody and there was no medical report to show that the applicant's health was failing from any government hospital.

Still on affidavit evidence ,the applicant further placed reliance on a 15 paragraph further affidavit the gist of which were that the applicant voluntarily resigned from the Bank on the 18th day of December, 2017 as confirmed in the petition forwarded to the EFCC by the bank. The applicant was not confronted with any statement of account nor was any customer shown him whose money was allegedly misappropriated. The respondent did not obtain any court order to detain the applicant until the 25th day of April, 2018 after he had been locked under inhuman condition for fifteen days. The said order was only obtained after the respondent had filed this complaint on the 24th day of April, 2018. Mr. Ambrose's attitude was to go to the cell and threaten the applicant and force him to write implicating statements.

The applicant won't abuse any bail opportunity that may be given to him and there were responsible persons willing to stand as sureties for him. The applicant had fallen seriously sick in the cell due to the inhuman condition of the cell. With or without a medical report, it was only understandable that a person kept under inhuman coition for over a month would have fallen sick therein. There was no medical facility inside of

the EFCC detention cell from which a medical report could be obtained. The material in the proof of evidence was not enough to sustain the charge against the applicant who would not interfere with prosecution witnesses. The deponent got married to the applicant in 2010 and had been looking for the fruit of the womb since then. The deponent had just got pregnant and same was being threatened by the applicant's incarceration.

In his address in support of the application, learned counsel to the applicant submitted that the court has the inherent powers to grant an order admitting the applicant to Bail. Reliance was placed on Section 36(5) of the 1999 Constitution of the Federal Republic of Nigeria, Section 115(2) of the Administration of Criminal Justice Law of Ekiti State 2016 and OLATUNJI VS F.R.N (2003) 3 NWLR (PT 807) 411-412 AT RATIO 2 as well as CHEDI VS ATTORNEY GENERAL OF THE FEDERATION (2006) NWLR PART 997 PAGE 313-314 AT RATIOS 5&7

It was submitted that there was no exceptional circumstance that should warrant the refusal of bail . Reliance was placed on ADEGBITE V COMMISSIONER OF POLICE (2006) 13 NWLR (PT 997)252 269 PARAS F-G,BOLAKALE VS STATE (2006) 1 NWLR (PT 967) 507 @ 518 and section 35 (1) of the Constitution. It was submitted that it was a right of an accused person, except where the alleged offence was capital in nature **unless circumstances exist** . Reliance was placed on BAMAIYI VS STATE (2000) 8 NWLR (PT. 761) 670, ALHAJI MUJAHID DOKUBO-ASARI V FRN (2007) 12 NWLR (PT 1048) 320.

It was submitted that all the legs of the charge against the applicant carried a maximum of seven years imprisonment upon conviction . Reliance was placed on ESSIEN VS COP (1996) 12 NWLR (PT 449) 489 at 503.It was submitted that a trial court ought to exercise its discretion in favour of the applicant otherwise it would amount to punishing the applicant . Reliance was placed on DOGO VS COP (1980) 1 NCR 14.It was submitted that the applicant had placed sufficient facts before the court to enable it exercise its discretion in his favour . Reliance was placed on ORJI V F.R.N (2007) 13 N.W.L.R PART 1050 RATIO 6. I was urged to grant the application.

In his own address, the learned counsel to the respondent submitted that this court has the discretion to either grant or refuse this application but that the discretion must

be exercised judicially and judiciously based on the materials placed before it. It was submitted that the applicant had not discharged the burden placed on him that would persuade this court to admit him to bail. As to the guiding principles which courts should follow , it was submitted that this included but not limited to the severity of the punishment, the character of the evidence against the person, the likelihood of the accused person interfering with the prosecution witness, the probability of committing more offences, the likelihood of the accused appearing for his trial. Reliance was placed on BAMAIYI V THE STATE (2001) 8 NWLR (PT. 715) 270 and other cases . It was submitted that the applicant's affidavit evidence had not shown any compelling circumstance to move the court to exercise its discretion in his favour considering the overwhelming evidence against as shown in the proof of evidence especially his statement . I was urged in line with the decision in BAMAIYI V STATE (SUPRA) to at this stage look at the proof of evidence and see whether a prima facie case was established against him or not.

It was submitted that at this stage, the court was being called upon not to evaluate the proof of evidence but to see whether the applicant was linked with the crime in issue. Reliance was placed on F.R.N. V. OLATUNJI (2003) 3 NWLR (PT. 807) 406 AT 429 PARAS. G-H. While conceding that offence of stealing was not capital in nature, it was submitted that it was a serious offence that would tempt the applicant to jump bail. Reliance was placed on BAMAIYI V STATE (SUPRA). It was submitted that the perspective with which foreigners looked at Nigeria because of this type of individual was aptly captured in FRN V. AMADI (2005) 2 QCCR 129 AT 153 LINES 20-25 .It was submitted that the refusal of the application would not offend section 36(5) of the 1999 Constitution on the presumption of innocence. It was submitted that this section did not entitle the applicant to automatic bail. Reliance was placed on UDEN V FRB (2001) 5 NWLR (PT. 706) 312 AT 326, PARAS B-C, DOKUBO ASARI V. FRN (2007) 5-6 SC 150 AT PP. 183-186 and ABIOLA V. FRN (1995) 1 NWLR (PT.370) 155.It was submitted that where evidence against the accused is direct and positive as in this case, the court ought not to grant bail to such accused person. Reliance was placed on OMODARA V STATE (2004)1 NWLR (PT. 53) 80 AT 92, PARAS C-D.

It was submitted that the applicant did not discharge the burden of proof placed on him by section 115 (2) of the Administration of Criminal Justice Law of Ekiti State 2014 to warrant his being granted bail. It was submitted that paragraphs 6e, 6f, 6g ,6 i and 6 0 contained extraneous matters like conclusions, opinions and legal arguments contrary to section 115 (2) of the Evidence Act, 2011 and I was urged to discountenance same. I was urged not to grant bail but order accelerated hearing in accordance with section 19(2) (b) of the Economic and Financial Crimes Commission (Establishment) Act 2004.

In the address in support of the further affidavit, it was urged that the burden was on the respondent to show why the applicant should not enjoy the presumption of innocence. Reliance was placed on BOLAKALE V STATE (2006) 1 NWLR (PT.962) 507 and SHAGARI V. C.O.P (2007) 5 NWLR (PT. 1027) 275 . It was submitted that the respondent failed to adduce any evidential material to support the averment that the applicant would jump bail. It was submitted that a person not yet tried for an offence known to law is entitled to be granted bail unless some circumstanced militate against it . Reliance was placed on ANI V STATE (2002) INWLR (PT. 747) 217 @ 230.It was argued that the court should not rush to remand an accused merely by the gravity of the alleged offence more so when the accused voluntarily submitted to arrest or had not abused the administrative bail earlier granted unto him. Reliance was placed on EBUTE V THE STATE (1994) 8 NWLR (PT 360) 66 . I was again urged to grant the application.

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

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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.

Now, I have closely studied the affidavit evidence before me. It had been averred that the applicant was sick. There was however no documentary evidence in support of same .It is settled that the mere fact that a person in custody is ill does not entitle him to be released from custody or allowed on bail unless there are really compelling grounds for doing so. See **CHINEMELU V. COMMISSIONER OF POLICE (1995) 4 NWLR (PT. 390) 467.** The applicant was charged in counts 1-10 with stealing huge sum 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, I will exercise my discretion in favour of the applicant. Bail is hereby granted to the applicant in the sum of N3,000,000:00 with two sureties in like sum . One of the sureties must be a Director in the public service. Each of the surety is also to deposit a certificate of occupancy which covered a piece of land within the jurisdiction of this court.

HON.JUSTICE A.L OGUNMOYE

JUDGE

28TH MAY , 2018.

APPEARANCES:

Olayemi O Fasina esq for the defendant /applicant.

Adeola Elumare esq for the complainant/respondent .