

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

BEFORE THE HONOURABLE JUSTICE O. A. BOADE – JUDGE
ON THURSDAY, THE 13TH DAY OF SEPTEMBER, 2012

CHARGE NO. I/5EFCC/2012

THE FEDERAL REPUBLIC OF NIGERIA PROSECUTION/RESPONDENT

AND

1. JOSHUA OGUNLOWO OLUGBENGA ACCUSED PERSON/APPLICANT
2. AKIN LEYE ADEYEMO) ACCUSED PERSONS
3. JAMES TELECOMS (NIGERIA) LTD)

1st and 2nd Accused Persons/Applicants present.
Mrs. Franca Obinwa for the Respondent.
Mr. K. A. Lawal for the 1st Accused Person/Applicant.
Mr. Peter Ubani for the 2nd Accused Person/Applicant.

RULING

The 1st accused person/applicant and two others were charged before this court on five counts of conspiracy to obtain goods by false pretence, obtaining goods by false pretence, stealing, fraudulent false accounting and issuance of a dud cheque. The applicant and the 2nd accused person were arraigned before this court on 23rd August, 2012 and pleaded not guilty to the 1st to 4th counts against them. Immediately thereafter the 1st accused person's counsel moved this application for bail which was brought by the 1st accused person on 30th July, 2012 pursuant to section 123 of the Criminal Procedure Law, Cap. 39, Laws of Oyo State, 2000, section 35 of Constitution of the Federal Republic of Nigeria, 1999 as amended and under the inherent jurisdiction of this court, for an order admitting the applicant to bail pending the hearing and determination of the charge against him.

The application is supported by an affidavit of 27 paragraphs sworn to by the wife of the applicant with ten exhibits attached thereto. The respondent filed a counter-affidavit of 20 paragraphs sworn to by Emeka Okonjo, one of the operatives of the Economic and Financial Crimes Commission assigned to investigate the allegation made against the 1st accused person/applicant and the other accused persons, on 23rd August, 2012, the date the application was heard.

It was deposed on behalf of the applicant, *inter alia*, that the applicant was once in the employment of Starcomms Plc, the complainant in this suit, and that the applicant resigned from the employment of Starcomms Plc vide a letter dated 23rd June, 2011 (attached as Exhibit "A"). That thereafter the applicant wrote Starcomms through his solicitors on 19th March, 2012 (Exhibit "B") demanding for his retirement benefits. That when there was no response to the request of the applicant he filed Suit No. I/475/2012 against Starcomms

(Exhibit "C") claiming for payment of his entitlement among other reliefs. That on 5th July, 2012 at their home an officer in the Legal Department of Starcomms, by name Gbolahan, called him on telephone to inform him that the company had decided to settle amicably the civil suit he instituted against Starcomms and he should come to Lagos for final settlement and collection of cheque. That the applicant thereupon went to Lagos office of Starcomms on 11th July, 2012 for final negotiation of out of court settlement but on getting there he was arrested by the operatives of EFCC in the office of Starcomms during negotiation on the alleged fraud perpetrated by one James Olaniyi, the alter ego of James Telecoms (Nig.) Ltd. against Starcomms Plc sometime between March and April 2011 and that he was being investigated. That the applicant was Head of Administration and Account of Starcomms when the incident involving alleged fraudulent activities of James Telecoms (Nig.) Ltd. occurred at the Ibadan branch office but he was not involved, did not conspire or collaborate with any other person to defraud Starcomms Plc while he was working with the company. That he only posted or at times instructed another officer to post cheques to the head office of Starcomms on daily basis when customers' post-dated cheques were sent to the bank for payment after giving out stocks on credit. That he was not the one reconciling the accounts of customers and would not know that any cheque he posted as paid would not have value unless alerted by the account officers dedicated to reconciliation of such account when detected from Lagos. That ordinarily any cheque sent to bank and posted as paid ought to have value instantly as such cheques were usually paid in the same bank that a customer operated his account and in this case Fidelity Bank Plc. That he was not notified on time that some James Telecoms cheques were not given value which caused the customer to receive goods/stock worth ₦17,339,000.00 in the first instance and immediately he received the alert from Lagos head office, he stopped giving out goods/stocks to James Telecoms but at that period, another ₦10.5 million goods/stock were also already at the disposal of James Telecoms and the post dated cheques James Telecoms presented were not ripe for lodgment. That he then informed James Olaniyi of the situation of his company cheques and the applicant sent the cheques of ₦10.5 million to Access Bank Plc in which James Telecoms said it had funds for payment but the cheques were returned unpaid. That he also sent the cheques of ₦10.5 million to James Telecoms' Zenith Bank Plc account for payment in an effort to liquidate James Telecoms debt but the cheques were also returned unpaid. That he later alerted the management of Fidelity Bank Plc in writing about the cheques given to one of the bank's staff for payment but which were never paid and one Bola who happened to be the account officer of James Telecoms was promptly arrested and detained at State C.I.D. Iyaganku, Ibadan. That he later contacted James Olaniyi about the whole development but the man started avoiding him and the police before he was eventually arrested and detained for further investigation at State C.I.D., Iyaganku, Ibadan. That after police investigation at State C.I.D. Iyaganku, James Olaniyi confessed to collaborating with his account officer, by name Bola, to defraud Starcomms and later made an undertaking to refund the sum of ₦27.9 million to the company. That Mr. James Olaniyi's Lawyer also made the same undertaking vide Exhibits "E" and "E1" respectively. That it was after the applicant was issued query by Starcomms and also suspended that applicant tendered his letter of resignation. That Starcomms closed its case/complaint against James Telecoms at the State C.I.D., Iyaganku, Ibadan and entered into a mutual written agreement with James Telecoms on how the debt should be paid back to Starcomms vide Exhibit "F". That it was because the agreement Starcomms reached with James Telecoms did not materialize coupled with the fact that the applicant sued Starcomms for payment of his retirement benefit that made Starcomms and EFCC to come back with malice to accuse the applicant of conspiracy and stealing with James Telecoms. That the applicant was intentionally denied of his liberty through the joint efforts of Starcomms Plc and the EFCC since 11th July, 2012 when the applicant was denied bail and was not taken to

any court of competent jurisdiction for his arraignment until 26th July, 2012. That the applicant has never been convicted of any crime before. That the applicant has responsible people who could stand as sureties for him if he is granted bail by this court and he will not tamper with any further investigation the EFCC may still want to conduct if he is granted bail. That the applicant will regularly come to court to stand trial in the criminal charge already filed against him and others if he is granted bail by this court.

In the counter-affidavit it was deposed, *inter alia*, that the correct position is that the officers of Starcomms arrested the 1st accused/applicant and handed him over to EFCC operatives for investigation and that investigation revealed that the 1st accused/applicant knew much more about this fraud in that Bola at large and Akinleye Adeyemo, the 2nd accused/applicant, report directly to the 1st accused/applicant by virtue of his position as Head of Administration and Accounts and that the depositions contained in paragraphs 11(b), (c), (d), (e) and (f) of the affidavit in support of the summons for bail are tissues of white lies and an afterthought to mislead this court. That the respondent investigation is based on hard fact that fraud of ₦28 million was perpetrated by both the 1st accused, 2nd accused, Bola at large, including the alter ego of 3rd accused, and was not based on malice and that investigation carried out by the EFCC positively linked the 1st accused/applicant with the fraud and it is not correct to conclude that at this stage that 1st accused is not connected with the fraud. That the 1st accused/applicant was promptly granted administrative bail by the commission (Exhibit EFCC A) but he failed to meet the conditions attached to it, hence his detention till when the charge was filed before this court. That there is no amount of surety(s) provided by the 1st accused/applicant that will enable him take up his trial. That Bola and the alter ego of 3rd accused are still at large and investigation revealed that they are in regular contact with the 1st accused/applicant and that releasing the 1st accused/applicant on bail will jeopardize the case of the respondent. That investigation further revealed that the 1st accused/applicant has perfected plan to abscond as soon as he is released on bail and that the 1st accused/applicant had made overtures through third party(s) to the operatives with a view of dropping the charges against him. That investigation is still on going in that Bola and the alter ego of 3rd accused are still at large and releasing 1st accused/applicant will affect the case of the respondent.

While adopting his written address, Mr. Lawal moved the application for the bail of the 1st accused person pursuant to section 123 of the Criminal Procedure Law and section 35 of the 1999 Constitution and relied on the affidavit in support and the exhibits attached thereto. He adopted the written address and urged the court to grant the application.

Mr. Oni, the counsel to the respondent, relied on the counter-affidavit in opposition to the application, particularly paragraphs 16-18 which he said were not controverted. He submitted that facts admitted need no further proof and urged the court to deem the facts therein as admitted. He adopted the written address and urged the court to discountenance the background facts in the written address and he adopted the background facts in the written address against the application of the 2nd accused person as the correct background facts. He urged the court to take note of the statement of the 1st accused person attached to the proof of evidence.

Mr. Lawal submitted that the court cannot use the background facts in the written address against the application of the 2nd accused person in the present application. He submitted that paragraphs 14-18 of the counter-affidavit are in reaction to the depositions in

paragraphs 20-24 of the affidavit in support of the application and as such issues have been joined on those facts and there was no need for further affidavit.

I agree with the submission that the court cannot use the background facts in the written address against the application of the 2nd accused person in the present application because the two applications were heard separately. However, that will not have any adverse effect on the written address. As regards paragraphs 16-18 of the counter-affidavit, it is to be noted that the counter-affidavit was filed on 23rd August, 2012, on the day the application was heard, there is no way the applicant could have challenged same. But I am of the view that the depositions in the said paragraphs 16-18 of the counter-affidavit cannot be treated without relating them to the facts already deposed to in the affidavit in support of the application.

The applicant and two others were charged before this court on five counts of conspiracy to obtain goods by false pretence, obtaining goods by false pretence, stealing, fraudulent false accounting and issuance of a dud cheque. The applicant and the 2nd accused person were arraigned before this court on 23rd August, 2012 and pleaded not guilty to the 1st to 4th counts which were the offences alleged against them. While the applicant claimed that he was innocent of the offences alleged against him the respondent alleged that he conspired with the other accused persons and others at large to commit the offences and urged the court not to grant the application.

Under section 36(5) of the 1999 Constitution, every person who is charged with a criminal offence shall be presumed to be innocent until he is proved guilty. The presumption is that the applicant is innocent of the offences with which he is charged until he is proved guilty. However, the right is not absolute and the section does not imply automatic bail to the applicant.

The offences alleged against the 2nd accused/applicant are not capital offences and therefore come under the provision of section 118(2) of the Criminal Procedure Law, Cap. 39, Laws of Oyo State, 2000. Under section 118(2) of the Law, 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. This court has discretion either to grant or refuse the bail sought by the applicant, the discretion which should be exercised both judicially and judiciously and based on well settled principles.

I have gone through the written addresses of counsel on the principles that should guide this court in determining the application for bail pending trial of an accused person and the application of the principles to the present application. The well settled principles or factors that should guide the court include:

- (a) the nature of the charge;
- (b) the gravity of the offence;
- (c) the character of the evidence;
- (d) the criminal record of the accused;
- (e) the likelihood of the repetition of the offence;
- (f) the severity of punishment in the event of conviction;

- (g) the probability that the accused may not surrender himself for trial; and
- (h) the risk that if released, the accused may interfere with witnesses or suppress the evidence likely to incriminate him.


See Bamaiyi v. The State (2006) L.R.C.N (Vol. 5) 338 at 340; Ofulue v. F.G.N. (2005) 3 NWLR (Pt. 913) 571 at 600-601; Nwude v. F.G.N (2004) 17 NWLR (Pt. 902) 306 at 327-328, Osakwe v. F.G.N. (2004) 14 NWLR (Pt. 893) 305 at 315, Olatunji v. F.G.N. (2003) 3 NWLR (Pt. 807) 406 at 429-430; Chinemelu v. C.O.P. (1995) 4 NWLR (Pt. 390) 467.

Having regard to the factors stated above, and having considered the Information containing the proof of evidence against the applicant and two others, the affidavit evidence and the submissions of counsel, I am of the view that the prosecution has established some *prima facie* evidence against the applicant and others charged together with him. But having regard to the nature of the offences alleged to have been committed by the applicant, which are not capital in nature, the fact that the prosecution has established a *prima facie* case against the applicant is not enough to deny the applicant bail if it is certain that he is going to be available to face the trial in respect of the charge against him.

The paramount thing for consideration in an application of this nature is the likelihood of the applicant making himself available for trial after being granted bail. I am of the view that, considering the circumstances leading to the arrest and detention and eventual arraignment of the applicant, this court could exercise its discretion in favour of the applicant by granting him bail pending his trial.

In the light of the foregoing, the applicant is hereby granted bail on the following terms and conditions:

1. In the sum of ₦2 million with two sureties in the same sum each.
2. Each of the two sureties should produce evidence of ownership of his landed property of not less than ₦2 million within the jurisdiction of this court and must deposit the original title documents of his property with the court. The verification of the sureties and title documents is to be done by the EFCC operatives within a reasonable time but not more than five days after the submission of such title documents.
3. Each of the sureties should swear to an affidavit of means to be verified by the EFCC.
4. The passport or any other travelling document of the applicant should be deposited with the EFCC pending the hearing and determination of the criminal charge against him.


 HON. JUSTICE O. A. BOADE
 JUDGE
 13/9/2012