

IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE WARRI JUDICIAL DIVISION
HOLDEN AT WARRI
ON WEDNESDAY THE 13TH DAY OF JULY, 2022
BEFORE HIS LORDSHIP, HON. JUSTICE OKON E. ABANG
JUDGE

CHARGE NO. FHC/WR/31^C/2022

BETWEEN:

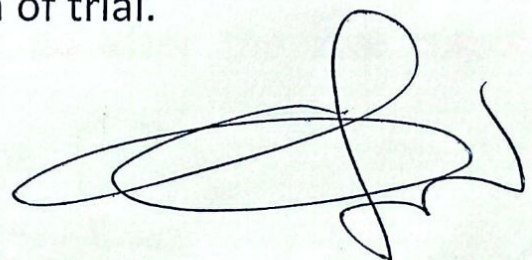
FEDERAL REPUBLIC OF NIGERIA::::::::::::: COMPLAINANT

AND

- | | | |
|-----------------------------------|---|------------|
| 1. RICHMAN PERE | } | DEFENDANTS |
| 2. RICH OIL DELTA WEST AFRICA LTD | | |

R U L I N G

In a Motion on Notice dated 30/5/2022 brought pursuant to section 158 of ACJA, section 35 of 1999 Constitution as amended and under the inherent jurisdiction of the court, the 1st Defendant prayed the court for an order admitting him to bail pending conclusion of trial.

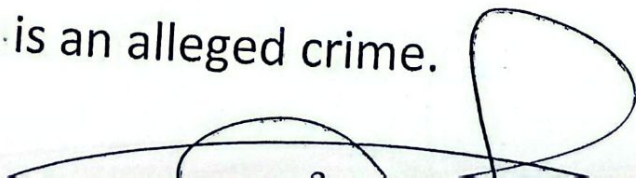


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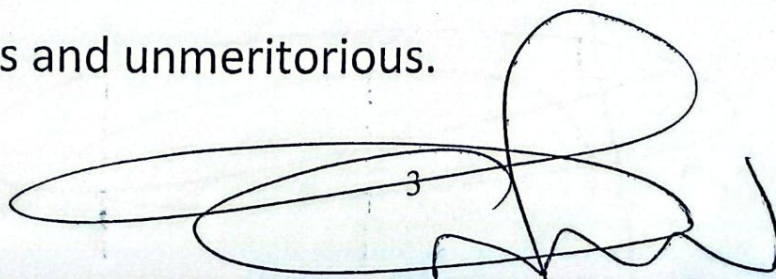
The application is supported by 19 paragraphs affidavit
deposed to by Richmon Pere the Defendant in this matter.
That he was charged before this court on 6/5/2022 by EFCC
on a 4 count charge bordering on obtaining by false
pretences, fraud and forging. That he is innocent of the
aforesaid offences filed against him. The depositions in
paragraphs 5 of his affidavit in support show the 1st
Defendant's defence to the charge filed against him which
is not necessary in consideration of his bail application
except that the 1st Defendant said in paragraph 12 of the
affidavit in support that he is a law abiding citizen and
innocent of the offences alleged against him as same was
framed up, unfounded and clearly a case of leaving the
substance and chasing the shadow as the EFCC has failed,
refused and/or neglected to go after the real culprit if
indeed there is an alleged crime.

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The Defendant then prayed the court to exercise its discretion in his favour in admitting him to bail on very liberal terms. That EFCC's investigation into the case has been completed and that he will neither tamper with any piece of evidence nor prevent prosecution witnesses from coming to court to testify against him during trial. That his continued remand at the Correctional Centre will adversely affect the preparation of his defence against the charges with the assistance of his counsel of his choice. That he undertakes to attend court faithfully till the final determination of the charges against him if admitted to bail. That he has substantial sureties to take him on bail. There is a written address in support dated 30/5/2022. In his written address, learned counsel for the Defendant submitted that the case against the 1st Defendant is frivolous and unmeritorious.

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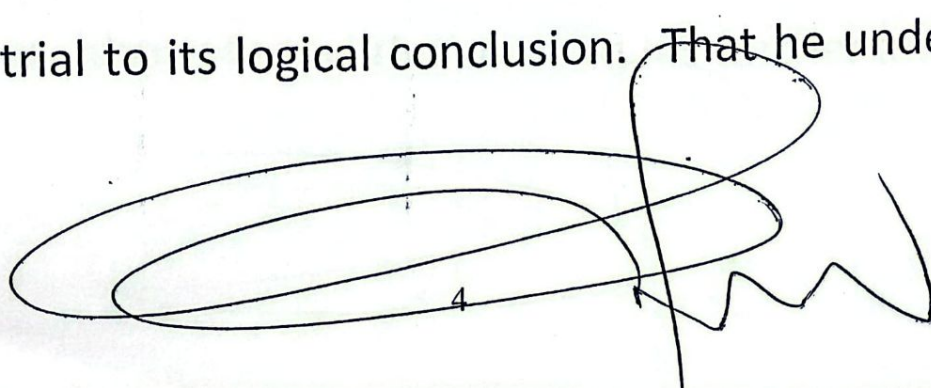


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That the Defendants' have no direct connection with the crime alleged and the EFCC has deliberately left the actual culprit if indeed there is an established crime.

That there is no evidence whatsoever against the Defendants herein in support of the watery charges. That there is no direct evidence linking the Defendants to any alleged offence. That evidence presented to court does not in any way incriminate the Defendant nor does it connect them to the commission of the offence.

That if there is any modicum of case against the them that the Defendants have never been charged before any court in relation to any criminal matter which according to the Defendants' counsel makes him a first time offender. That the 1st Defendant will not jump bail, and that he is ready to stand trial to its logical conclusion. That he undertakes to

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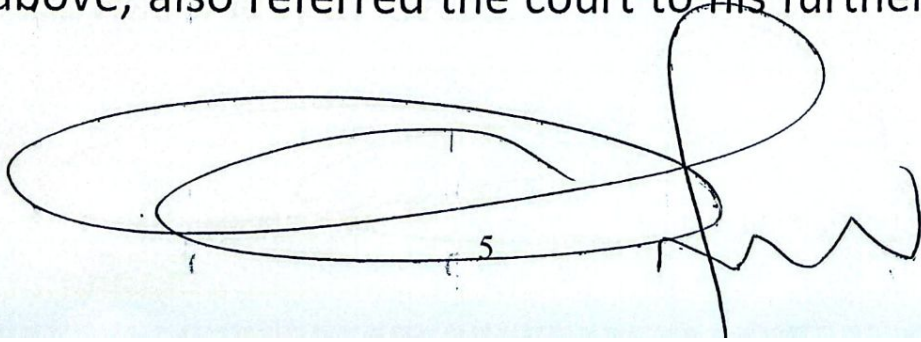
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make himself available for trial. That there is no evidence that he has any criminal antecedent.

Learned counsel relied on the following cases:-

Fashehen V. AG of the Federation (2006) 43 WRN 99 at 111, Agundi V. COP (2013) All FWLR (PT. 660) 1247 at 1319 – 1320 Bamayi V State (2001) PT. 46 956 and then urged the court to admit the 1st Defendant to bail.

When the matter came before the court on 6/7/2022 for hearing of the bail application of the 1st Defendant, learned counsel for the Defendants S.A. Atarere moved the application for the bail of the Defendant in terms of the reliefs endorsed on the motion paper dated 30/5/2022 and then urged the court to admit the 1st Defendant to bail on liberal terms. Learned counsel for the Defendant, besides the above, also referred the court to his further affidavit of

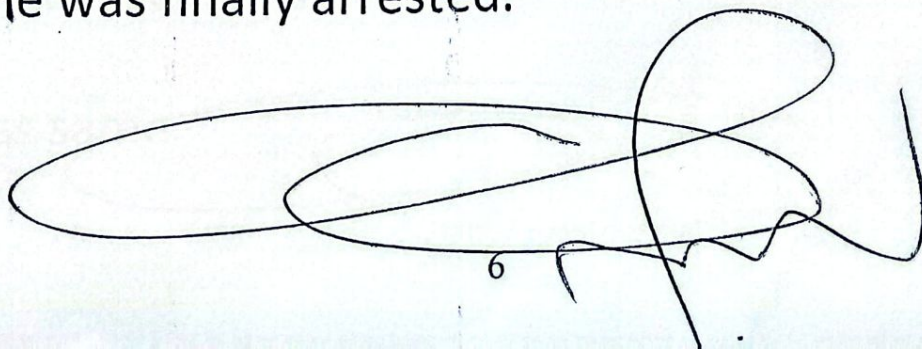


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14 paragraphs dated 5/7/2022 and then urged the court to grant the application as prayed.

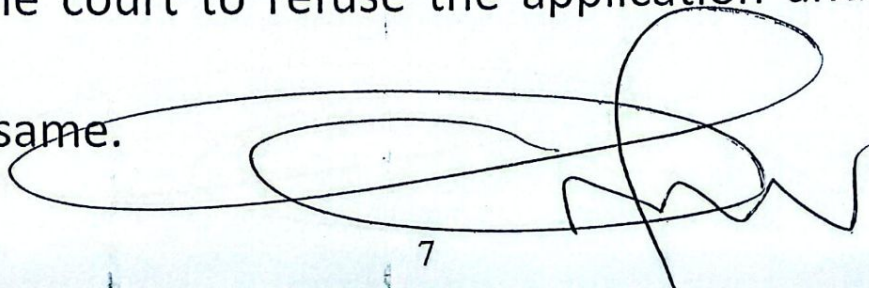
On their part, prosecution counsel I.M. Elodi referred the court to the prosecution's counter affidavit of 7 paragraphs divided into several sub paragraphs dated 28/4/2022 deposed to by Catherine Waume. She states as follows that the Defendant having understood the nature of the charges filed against him will definitely jump bail if admitted to bail. That in the course of investigation of the case, that the Defendant in order to shield himself from arrest changed locations severally so as to stifle or frustrate the investigations. That it took concerted effort of the investigators to get the 1st Defendant arrested. That the 1st Defendant hid himself and constantly changed his locations until he was finally arrested.



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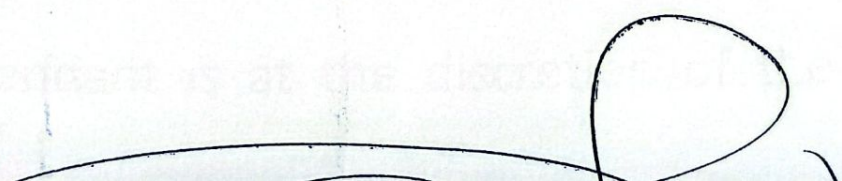
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That he was granted administrative bail during the course of investigation of the case and he jumped bail when he was not seen or served with the proof of evidence but jumped bail. That having seen the charge and proof of evidence filed against him that the Applicant will escape from justice and jumped bail if the application is granted to truncate the speedy trial of this case. That the offence the Defendant is standing trial is prevalent in the country. That the antecedent of the Applicant is highly indicative of him jumping bail if granted bail by this court. That accelerated hearing of the case will serve the justice of the case. There is a written address dated 9/6/2022. Learned counsel I.M. Elodi for the prosecution relied on the dispositions in his counter affidavit, adopted his written address and then urged the court to refuse the application and accordingly dismiss same.

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Learned counsel further referred the court to the proof of evidence and stated that the prosecution have a strong case against the 1st Defendant. That the evidence is overwhelming that if the Defendant is released on bail that he will jump bail and delay trial in the matter.

Learned counsel for the prosecution I.M. Elodi with great force submitted that while urging the court to exercise its discretion in his favour, the Defendant should not embark on a voyage of falsehood to hoodwink the court in the name of interest of justice but should show sufficient facts why the court should exercise its discretion in his favour that it is lacking here. That the import of section 36(5) of 1999 Constitution as amended as regard presumption of innocence does not avail the 1st Defendant an instant right to bail.



Learned counsel adopted his written address and then urged the court to grant the application.

In his further affidavit, the 1st Defendant denied jumping bail. He said he travelled offshore for a job where there was no telephone network service that the Complainant jumped to the conclusion that he jumped bail.

My Lords, I have considered facts deposed to by the 1st Defendant in his affidavit in support of the application. I have also considered facts deposed to by the prosecution in their counter affidavit. I have again considered written addresses filed by the parties for and in opposition to the grant of the application. I have also considered the brief oral submission of learned counsel representing the parties. To admit or refuse the application for the bail of the 1st Defendant is at the discretion of the court. The court is enjoined to exercise its discretion judicially and

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judiciously based on the facts as deposed to in the affidavit in support and counter affidavit and the applicable law. The exercise of the court's discretion should point at nothing except the justice of the case.

Contrary to the facts deposed to by the 1st Defendant in his affidavit in support of the application for bail it is not an avenue for the 1st Defendant to present his defence to the charge. That is meant for trial. The 1st Defendant even went ahead to say that he is the first offender thereby convicting himself, as if learned counsel for the Defendant was presenting allocutus.

The 1st Defendant in his supporting affidavit deposed to facts that are not relevant in an application for bail.

The court will definitely not go into the merit of the case here. Whether the case of the prosecution is weak or strong is an issue for determination in a plenary trial not in

application for bail of the 1st Defendant. Whether the 1st Defendant has been charged to court before which makes him a first time offender according to learned defence counsel is irrelevant in an application for bail.

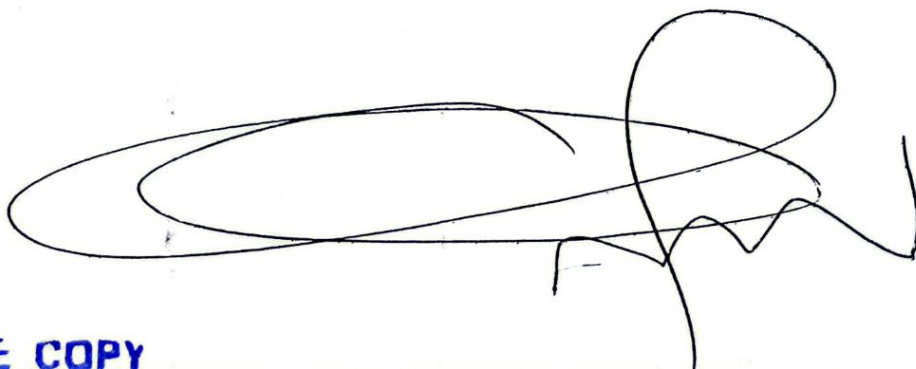
The concern of the counsel at this stage should be that the Defendant is charged with a bailable offence. That he is presumed to be innocent until the contrary is proved and not to argue on what is not relevant in an application for his bail.

The 1st Defendant was arraigned before this court on 6/5/2022 on a 4 count charge dated 21/3/2022 that the Defendants on or about 23/7/2019 at Effurun in Delta State with intent to defraud induced Alhaji Yise Bello of success Ventures International Ltd. to deposit the sum of 72 million into account number 1015477975 domiciled at UBA Plc operated by the Defendants with the false pretence that he

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has 1,000,000 barrel of crude oil to supply to him which pretence the prosecution alleged that the Defendant knew is false and thereby committed an offence contrary to section 1(1)(b) of the Advance Fee Fraud and other related Offences Act 2006 and punishable under section 1(3) of the same Act.

The offence the 1st Defendant is charged with is bailable. Under the 1999 Constitution as amended specially section 36(5), he is presumed to be innocent until it is proved otherwise by the prosecution. The prosecution have concluded their investigations and the matter charged to court. Therefore I am inclined to exercise my discretion in his favour in admitting him to bail pending conclusion of trial.

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This is what the defence counsel should be concerned with not to put up a defence to the charge or come to a conclusion that the charge is frivolous or unmeritorious.

Learned counsel for the 1st Defendant is expected to keep his gun powder dry and allow the prosecution prove their case. It is only at the end of the case of the prosecution that based on evidence adduced that he can justifiably make submission of that nature that is if the evidence will not disclose a prime facie case against the Defendant certainly not now.

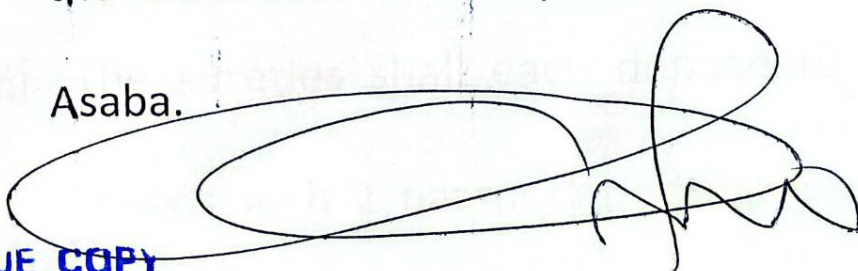
The prosecution also raised a very viable issue that the 1st Defendant jumped administrative bail and they are apprehensive that if admitted to bail the 1st Defendant will jump bail and flee from justice. This cannot be over looked.

The purpose of admitting the Defendant to bail is for him to have his freedom and adequately prepare for his defence

and not for him to flee from justice. The court will certainly put in place such conditions that it believes will guarantee the attendance of the 1st Defendant in court at all times till the matter is disposed of.

In the light of above, the 1st Defendant is

- (1) Admitted to bail in the sum of N72million naira with 2 sureties in the sum of N36 million naira each.
- (2) The sureties must be owner of landed property and resident in either Warri, Sapele, Effurun or Ughelli or Asaba Area of Delta State with statutory certificate of Occupancies.
- (3) The Principal Registrar II of this Court Warri Division shall in writing verify the genuineness or otherwise of the Certificate of Occupancies at the lands Registry Asaba.



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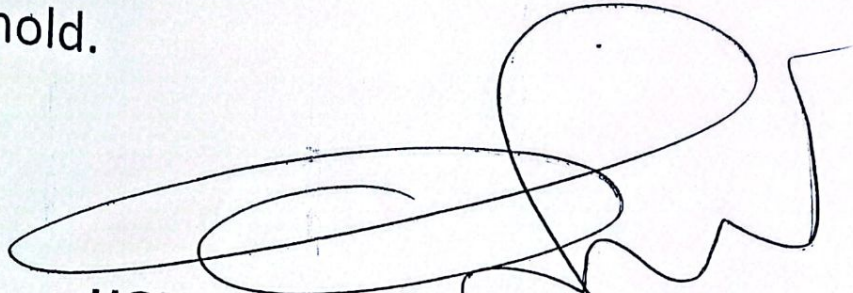
(4) The prosecution through the investigating officer shall in writing within 24 hours of being put on notice ascertain the residence of the sureties and confirm that they are the owners of the property pledged as securities for the bail of the 1st Defendant to be in any of the following cities, Warri, Effurun, Ughelli, Sapele or Asaba Areas of Delta State.

(5) The 1st Defendant shall deposit his International passport with the Principal Registrar II of this court and where he has none, a correspondence to that effect shall be issued from Nigerian Immigration Service.

(6) The sureties shall each depose to an affidavit of means with 2 passport photographs attached and

ascertain his or her capability or capacity to refund the penal sum in the event of being called upon to do so.

I so hold.



HON. JUSTICE OKON E. ABANG

PRESIDING JUDGE

13/7/2022

Appearances:-

S.A. ATERERE:- for the Defendant.

I.M. ELODI: for the prosecution.



HON. JUSTICE OKON E. ABANG

PRESIDING JUDGE

13/7/2022



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