IN THE HIGH COURT OF JUSTICE
IN THE BENIN JUDICIAL DIVISION
HOLDEN AT BENIN CITY
BEFORE HIS LORDSHIP, HON.JUSTICE P.A.AKHIHIERO,
JUDGE, ON THURSDAY THE
18TH OF AUGUST, 2016.

CHARGE NO: B/CD/392M/2016

BETWEEN:

COMMISSIONER OF POLICE é é é é .....COMPLAINANT/RESPONDENT

AND

UCHE OSAYANDEé é é é é é é é é é é é ACCUSED/APPLICANT

RULING

This is a ruling in an application for bail by means of a Summons to admit to Bail brought pursuant to section 118(1) of the Criminal Procedure Law Cap. 49, vol. 11, Laws of the former Bendel State Of Nigeria, 1976, now applicable in Edo State and section 36(5) of the Constitution Of The Federal Republic Of Nigeria, 1999.

Moving the application, the learned counsel for the Applicant, Mrs.M.Imafu, prayed the Court for an order: admitting the Accused/Applicant

(Uche Osayande) to bail, pending the hearing and determination of the substantive criminal charge against him in respect of Charge No: MEV/67C/2016.

In support of the summons to admit to bail is an 18 paragraphs affidavit deposed to by the Accused/Applicant. She relied on all the paragraphs of the affidavit together with the exhibit attached and marked as exhibit ñAò.

She submitted that bail is meant to procure the release of someone charged with an offence by ensuring his future attendance in court and compelling him to remain within the jurisdiction of the court. She relied on the case of: *EZEBO vs. STATE (2005) ALL FWLR (PT 267) pg. 1486 @ 1491 RT. 9; and EKWENUGO vs. F.R.N. (2011) FWLR (PT 63) 99 (2001) FWLR (PT. 70) 171.*

Counsel submitted that in an application for bail, there are certain guiding principles which the Court will consider before exercising its discretion.

She enumerated them as follows:

1. The nature of the charge;
2. The severity of the punishment; and
3. The character of the evidence amongst others.

She cited the cases of*: ANI V STATE (2001) FWLR (PT 81) 1715 and ORJI V F.R.N. (2007) 13 NWLR (PT 1050) PG 55 RT. 6.*

She referred the Court to paragraphs: 12, 13 and 14 of Applicants Affidavit where he gave an undertaking that he will not jump bail and that he is ready and willing to defend himself to the end of this trial.

She submitted that the offence for which the Applicant was charged to court is kidnapping, and that the Court can exercise its discretion to grant the accused bail. She urged the Court to grant bail to the Applicant in the interest of justice. She further submitted that the accusation leveled against the Applicant is unfounded and that the Applicant is innocent. According to Counsel, the Applicant

denied any involvement in the kidnapping of the nominal complainant. She maintained that the 1st accused person in the charge is a friend of the Applicant and that there is nothing else connecting him with the offence. That he was only in the company of those who kidnapped the complainant.

The learned counsel referred the Court to an affidavit of withdrawal of complaint by the complainant attached as Exhibit ñAò to the Applicantôs affidavit and posited that the complainant is no longer interested in the prosecution of the charge. She referred the Court to section 248(sic) of the Criminal Procedure Act Cap C14 which provides as follows:

> *"If a complainant at any time before a final order is made in any case under this chapter, satisfies the court that there are sufficient grounds for permitting him to withdraw his complaint, the court may permit him to withdraw the same and shall thereupon acquit the accused unless the court directs that the accused instead of being acquitted shall be discharged"*

Counsel insisted that the Applicant is only a victim of circumstance. She urged the Court to grant bail to the Applicant as he is presumed innocent by the provisions of section 36(5) constitution of the Federal Republic of Nigeria, 1999 (as amended).

She stated that the Applicant has a willing and reliable surety or sureties ready to take him on bail and ensure his future attendance in Court.

She argued that the main purpose of bail is to ensure the attendance of the Applicant in court by putting him in trust of a credible, reliable and reasonable surety who will ensure his attendance in court. She relied on the case of: *SULEMAN V C.O.P (Plateau) (2008) 8 NWLR (Pt. 1089) 298 @ 323 Para E – A.*

Counsel reiterated that the Applicant is presumed innocent by the provision of section 36(5) of the 1999 constitution and should not be kept in the prison, punished and neglected before he stands his trial. She argued that the court should not be used as an object of oppression but as an instrument justice and relied on the case of: *VINCENT v THE STATE (2001)2 ACLR PT @ 97 RT. 1.*

On the issue of the character of the evidence, counsel submitted that it is not in all cases that the quality of evidence given by the prosecution will preclude the court from granting bail to the accused person and relied on the case of: *SHAGARI V. C.O..P (2007) 5 NWLR (PT 1027) 272 Par. C-D.*

Finally, Counsel urged the Court to admit the Applicant to bail on liberal terms as he has a willing and reasonable surety who is willing and ready to take him on bail and ensure his continuous attendance in court regularly, until the case is finally determined.

Responding, the learned Counsel for the Respondent, Mrs. M.O.Oseghale, State Counsel, informed the Court that she was opposing the application. In opposition, she filed a 17 paragraphs Counter-Affidavit.

She submitted that the lone issue for determination in this application is:

> **"***Whether the Applicant has shown the existence of any special circumstance to justify the exercise of the discretion of the Court to grant his application for Bail".*

She submitted that Section 118(2) of the Criminal Procedure Act makes the grant of bail to an accused person standing trial before a High Court purely a discretionary matter in the hands of the trial Judge.

She added that where the offence carries a sentence of imprisonment of a period of 3(three) years or more, the grant is not a mere matter of course but the onus is on

the Applicant to show the existence of any special circumstance to justify the exercise of the discretion of the court in his favour.

Counsel posited that the law requires that the court must exercise its discretion judicially and judiciously. She relied on the case of *WAZIRI V GUMEL & ANOR (2012) VOL. 209 LRCN 40 at 46 ratio 4*, where the Supreme Court held*, inter alia,* that *"..... all discretionary powers must be exercised with correct and convincing reasons ..."*

She referred the Court to the case of *DOKUBO ASARI V FRN (2007) LPELR 958 (SC) or(2007)12 NWLR (Pt. 1048) 320* ratio 1,where the Supreme Court enumerated the factors to be considered by the court as follows:

(i) the nature of the charge;

(ii) the strength of the evidence which supports the charge;

(iii) the gravity of the punishment in the event of conviction;

(iv) the previous criminal record of the accused if any;

(v) the probability that the accused may not surrender himself for trial;

(vi) the likelihood of the accused interfering with witnesses or may suppress any evidence that may incriminate him;

(vii) the likelihood of further charge being brought against the accused;

(viii) the probability of guilt;

(xi) detention for the protection of the accused;and

(x) the necessity to procure medical or social report pending final disposal of the case.

She also referred to the cases of: *ABACHA V THE STATE (2002) 5 N.W.L.R. (Pt. 761)638; Ani v State (2002) 1 N.W.L.R. (Pt. 747) 217; and*

BAMAIYI V. THE STATE (2001) Vol. 86 LRCN 1156 at 1160 ratio 6 where their Lordships, held, inter alia that *"it is by no means expected that all the(above*

stated criteria) will be relevant in every case…..It may well be anyone or others may be applied to determine the questions of bail in a particular case"

Thereafter, she addressed the Court on the following criteria:

1. The nature of the charge;
2. The strength of evidence which supports the charge;
3. Probability of guilt;
4. The probability that the accused will surrender himself for trial
5. The health of the Accused/Applicant

1. THE NATURE OF CHARGE:

On the nature of the charge, counsel submitted that the offence of kidnapping is a very serious offence, which attracts capital punishment, the highest punishment known to law. She referred to the dictum of the Supreme Court in the case *of SULEIMAN & ANOR V COP PLATEAU STATE (2008) LPELR 3126 OR (2008)8 NWLR (Pt.1089), per NIKI TOBI JSC, at page 21 Paras E.G. that "..It is the belief of the law that the more serious the offence, the greater the incentive to jump bail…"*

She also referred to the case of*: ONYEBUCHI V FRN & ANOR (2007) LPELR 4134 (CA) RATIO 3.*

She urged the Court to consider the very serious nature of the offence in question and refuse this application.

2. THE STRENGTH OF EVIDENCE WHICH SUPPORTS THE CHARGE:

Counsel submitted that the evidence available against the Accused/Applicant is very strong and overwhelming. She referred to the confessional statement of the Applicant annexed as Exhibit A in the Counter Affidavit.

She urged the Court to refuse this application in the light of the overwhelming evidence against the Applicant.

3. THE PROBABILITY OF GUILT:

Learned counsel submitted that owing to the overwhelming evidence against the Applicant, he is most likely to be convicted.

She referred to the case of *ANAEKWE V COP (1996) 3 NWLR (Pt. 436) 320 at 324 ratio 4.*

She argued that there is a high probability that the Applicant will be convicted owing to the overwhelming evidence against him. According to her, the presumption of innocence as enshrined in section 36(5) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), would no longer apply. She relied on the case of: *ONYEBUCHI v FRN 7 ANOR, supra, ratio 4.*

4.THE PROBABILITY THAT THE ACCUSED WILL SURRENDER HIMSELF FOR TRIAL:

The learned State Counsel submitted that the Supreme Court in a plethora of cases has held that this is the most important consideration the court should consider in deciding whether or not to grant bail to an accused person. She submitted that if there is any reason to believe or any suggestion to the effect that Applicant will not surrender himself for trial, the bail should be refused out rightly. She referred to the case of *SULEIMAN & ANOR V COP PLATEAU STATE, supra, ratio 6.*

Finally, she submitted that the Applicant is most likely to jump bail if the application is granted and referred to the case of *BAMAIYI V THE STATE, supra, ratio 8.*

In conclusion, she urged the Court to refuse this application in the interest of justice.

Having carefully considered the affidavit evidence, the submission of bothcounsel and the judicial authorities cited, the issue for determination is:

whether the Applicant has placed before the court sufficient facts to enable it grant the application.

It is settled law that the grant or refusal of an application for bail is at the discretion of the Court. Like all other discretions it must be exercised judicially and judiciously, taking cognizance of the facts before it. See*: Ogbonna Vs FRN (2011) 12 NWLR (PT. 1260) Pg. 100 @ 104.*

In the exercise of that discretion; the court must be guided by the laid principles set in a plethora of judicial authorities; See: *DAKUBO ASARI VS F.R.N* (2007) All FWLR (PT. 375) Para B – F.

In the case of: *UWAZURIKE VS. A.G.FEDERATION* (2008) 10 NWLR (Pt.1096) 444 at 449, the Court of Appeal enumerated the relevant factors to be considered in an application for Bail pending trial. They are as follows:

1. The evidence available against the accused;
2. The availability of the accused to stand trial;
3. The nature and gravity of the offence;
4. The likelihood of the accused committing another offence while on bail;
5. The likelihood of the accused interfering with the course of justice;
6. The criminal antecedents of the accused person;
7. The likelihood of further charges being brought against the accused;
8. The probability of guilt;
9. The detention for the protection of the accused; and
10. The necessity to procure medical or social report pending final disposal of the case.

In the said *UWAZURIKE VS. A.G.FEDERATION case (supra),* the Court opined that these factors are not exhaustive in guiding any trial court. Also that it is not necessary that all or many of these factors be present in a particular case to act as a guide to the court.

However, the major factor the Court is called upon to determine in an application for bail pending trial is whether the accused will be available to stand his trial. In the recent case of: *AKANO VS. FEDERAL REPUBLIC OF NIGERIA (2016) 10 NWLR (Pt.1519) 17 at 19,* the Court of Appeal, Ibadan Division, posited that:

> *"It is a proper and useful test, whether bail should be granted or refused, to consider the probability that the accused will appear in court to take his trial. In that regard, it is proper to consider the nature of the offence, the nature of the*

evidence in support and the severity of the punishment which conviction will entail".

Applying the foregoing principles to the instant application, the first factor to consider is that of the nature of the offence. In all, there are 3 counts, ranging from Conspiracy to commit a felony; to Kidnapping; and unlawfully demanding for money by threat. These are serious offences. The offence of Kidnapping is punishable with the death penalty.

Next is the nature of the evidence in support of the charge. Again, the evidence disclosed from some parts of the proof of evidence appears weighty. The Applicant made a confessional statement which was annexed as Exhibit A in the Counter Affidavit.

On the requirement of the severity of the punishment, the punishment for kidnapping is capital punishment. See: Section 9 of the Edo State Kidnapping Prohibition (Amendment Law) 2013. This is the highest punishment known to law. In the case of: *AYO OLUGBUSI VS C.O.P. (1970) 2 ALL NLR 1 AT 4,* it was held that:

"…where a crime is of highest magnitude; the evidence in support of the charge, strong and the punishment the highest known to the law, the court will not interfere to admit to bail. Where either of these ingredients is wanting, the court has a discretion which it will exercise".

The three salient factors appear to be present in this case to fetter the exercise of the discretion of the Court in favour of the Applicant. I am not unmindful of the reference to the affidavit of withdrawal of complaint by the complainant attached as Exhibit ñAò to the Applicantôs affidavit and the provisions of section 248(sic) of the Criminal Procedure Act Cap C14 which the counsel to the Applicant relied upon. The point must be made that the said section 248 of the

CPA was cited in error. The correct section on withdrawal of complaint is section 284 of the CPA.It must however be noted that the said section 284 cannot be invoked at this stage. That section can only come to play during the main trial. It provides as follows:

Section 284: Whithdrawal of Complaint:

> *"If a complainant at any time before a final order is made in any case under this chapter, satisfies the court that there are sufficient grounds for permitting him to withdraw his complaint, the court may permit him to withdraw the same and shall thereupon acquit the accused unless the court directs that the accused instead of being acquitted shall be discharged"*

Any attempt by the Complainant to agree to prevent the prosecution of the Accused/Applicant at this stage will amount to the offence of compounding a felony punishable under section 127 of the Criminal Code.

Consequently, I am unable to exercise my discretion in favour of the Applicant. Bail is refused.

P.A.AKHIHIERO
JUDGE
18/08/16

COUNSEL:

MRS.M.IMAFU ……..APPLICANT

EDO STATE DIRECTOR OF PUBLIC PROSECUTIONS ……..RESPONDENT