

IN THE FEDERAL HIGH COURT OF NIGERIA  
IN THE ABAKALIKI JUDICIAL DIVISION  
HOLDEN AT ABAKALIKI  
ON FRIDAY 2<sup>ND</sup> DAY OF DECEMBER, 2016  
BEFORE HIS LORDSHIP  
HON JUSTICE M. L. ABUBAKAR  
(JUDGE)

SUIT NO. FHC/AI/36C/2016

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA :::            ::: COMPLAINTANT

AND

1. UGWU IFEANYI  
2. OKEREKE MICHAEL  
3. ENEH CHIMOBI  
4. ONYEBUCHI IBE

} DEFENDANTS

APPEARANCES

Defendant Absent

L. N. Akan - Prosecution

C. A. Aiyamekwe with 1<sup>st</sup> and 4<sup>th</sup> Defendant

C. O Adonwe Esq., C.C. Nwafor,

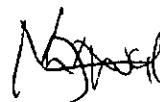
And E. C. Chukwukhe.

S. A. Agbafor - 2<sup>nd</sup> Defendant

Ucheenna Eme - 3<sup>rd</sup> Defendant

With E. A. Awoke Esq.

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## RULING ON APPLICATION FOR BAIL

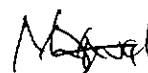
The Defendants stand charge of conspiracy and tampering with armoured cable, property of Ministry of Power Ebonyi State contrary to and punishable under Section 516 of the criminal code CAP 77, laws of the Federation 2004 and Section 1(9) of the miscellaneous offences Act, CAP M-17 laws of the Federation 2004

The Counsels to the Defendants filed 4 deferent application for bail in respect of the Defendants under Section 158 and 162 of the Administration of Criminal Justice Act 2015 as follows:-

1. C. A. Aiyamekwe Esq. filed two separate applications in respect of the 1<sup>st</sup> and 4<sup>th</sup> Defendant on 14/10/2016 together with two Affidavits in support and two written addresses.
2. O. Okorie Esq. filed another application on 14/10/16 in respect of the 2<sup>nd</sup> Defendant together with an Affidavit and a written address.
3. Okwuchile Ogbuilya Esq. filed another application for the 3<sup>rd</sup> Defendant on 3/11/16 together with an Affidavit and a written address.

The counsels to the Defendants cited so many authorities too numerous to be cited here and urged the court to grant their various applications.

In reaction, the counsel to the prosecution L. N. Akan (Mrs.) submitted that they have filed a preliminary objective together with a 9 paragraphs Affidavit and a written address on 2/11/2016. There is also a 22 paragraphs Counter Affidavit filed on 27/10/2016 together with a written address challenging the averments in the Applicant's application.



It is trite law that once a party filed a Notice of preliminary objection challenging the jurisdiction of the court, it is pertinent for the court to settle that issue first before going into the main, case because without jurisdiction, any decisions reach by the court will amount to a nullity. See the case **NANA OPIA V. INEC (2014) 57, NSCQR PER K.M.O KEKERE-EKUN JSC at pg 1276.**

In the said preliminary objection filed by the prosecution, they are seeking for an order striking out all the Bail applications dated the 14<sup>th</sup> day of October 2016 and filed by O. Okorie Esq. S. Egwu Ohia Esq. and C. A. Aiyamekwe Esq. all for the same Defendants/Applicants in this case for abuse of court process.

In support is a 9 paragraphs Affidavit and a Written Address where a sole issue for determination was raised. The counsel cited the case of *AMAEFULA V STATE (1991) 6 NWLR Pt 75 at 156 and the case of SARAKI V KOTOYE (1992) 9 NWLR (Pt.200) at 659.* The counsel argued that in the light of paragraphs 1-8 of their Affidavit in support of the application, there is clear case of an abuse of court process as it put the prosecution in doubt as to who and who he is dealing with and misleading him as well. He added that it is an above of court process where a party filed multiple motions on the same charge, the same person and the same court. he cited the case of *OKORODUDU V OKOROMADU (1977) 3 SC 21* and urged the court to grant their application.

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In reaction to the preliminary objection, the counsel to the 1<sup>st</sup> and 4<sup>th</sup> Defendants, submitted that the preliminary objection has been over taken by events as he has withdrawn his appearance for the 2<sup>nd</sup> Defendant. He urged the court to discountenance the objection.

Those are the submissions of both counsels pertaining to the preliminary objection. The issue for determination is whether the application has merit or not.

I have carefully considered the application, the record of the court and found that:-

- (1) C. A. Aiyamekwe Esq. has actually withdrawn his appearance for the 2<sup>nd</sup> Defendant and is now being represented by O. Okorie Esq.
- (2) S. Egwu Ohia Esq. has filed a Notice of withdrawal of Motions for Bail in respect of the 1<sup>st</sup> and 4<sup>th</sup> Defendant on 7/11/2016.

In view of this development, I entirely agreed with the submissions of counsel to the 1<sup>st</sup> and 4<sup>th</sup> Defendant i.e C. A. Aiyamekwe Esq. that the preliminary objection has been overtaken by events. I hold that there is no longer an abuse of court process and that the Applications for bail are properly before the court.

This brings us back to the four Applications for bail in respect of the Defendants. As mentioned earlier, they were filed on 14/10/16 and 3/11/16 together with their supporting Affidavits and Written Addresses. In response, the prosecution filed a 22 paragraphs Counter –Affidavit on 27/10/2016 together with a Written Address where a sole issue for determination was

raised to wit whether this court can exercise its discretion granting bail to the Applicants regardless of the nature and severity of the offence.

The counsel submitted that a person charged with an offence will not be admitted to bail if the offence alleged is prevalent in the society. While the bail is intended to secure the attendance of the accused person, it is also necessary to discourage the commission of offences that has attained high frequency of occurrence such as the offences with which the Defendants are charge. The counsel added that there is high probability that the Defendants May abscond once granted bail. He referred to paragraph 21 (v) of their counter-Affidavit and the *case of CHINEMELU v COP (1995) 4 NWLR Pt 390 at 6477*. He further submits that contrary to section 117 (1) (6) of the Evidence Act, the Defendants have failed to supply their business or residential addresses within jurisdiction in their supporting Affidavits. The Counsel also submitted that where an offence carries a sentence of imprisonment for a period of 5 years or more, the grant of bail is not a mere matter of course. He argued that the offence with which the Defendants are charge attract life imprisonment, if proven. *He cited the case of DOKUBO ASARI V F.R.N (2007) 12 NWLR (Pt. 1048) 320 R. 6*. He urged the court to grant his application.

Those are the submissions of counsels to both Defendants/Applicants and the prosecution/Respondent. Am of the opinion that the issue for determination is whether the Applicant are entitled to bail or not.

Generally, in granting or refusing an application of this nature, courts are enjoined to consider some conditions as follows:-

- (1) The nature of the charge
- (2) The strength of the evidence which support the charge
- (3) The gravity of the punishment in the events of conviction.
- (4) The previous criminal record of the accused, if any.
- (5) The probability that the accused may not surrender himself for trial.
- (6) The likelihood of the accused interfering with witnesses or may suppress any evidence that may incriminate him.
- (7) The likelihood of further charge being brought against the accused.
- (8) The necessity to procure medical or social report pending final disposed of the case.


See the case of YUNUS V F.R.N (2015) 10 NWLR Part 1466 pg 86 R I, 2 and 3.

In the instant case, the Defendants are facing charges of conspiracy and tampering with armoured cable which if convicted will attract life imprisonment. It is needless to say that they are facing very serious charges in nature.

I have carefully considered the various applications of the Applicants, and all the other processes filed and found that the Applicants are facing serious charges and if convicted are liable to go for life imprisonment which is a severe punishment. There is also the likelihood that they will jump bail if granted bail. In other words, the Applicants have failed to discharge the

initial burden to show good cause why they are entitled to be release. In view of that the applications are hereby refused and the matter shall be given from accelerated hearing.

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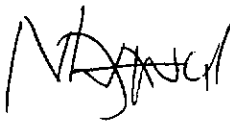
  
M. L. ABUBAKAR  
JUDGE  
3/12/2016

L. N. - We are grateful and are asking for date

C. A. - We appreciate the Ruling

COURT: Case adjourned to 16/12/16 for hearing prosecution to assemble their witnesses on that date.

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M. L. ABUBAKAR  
JUDGE  
3/12/2016