

IN THE FEDERAL HIGH COURT OF NIGERIA

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT ABUJA

ON WEDNESDAY THE 2ND DAY OF MARCH, 2016

BEFORE HIS LORDSHIP, HON. JUSTICE A. R. MOHAMMED

(JUDGE)

SUIT NO. FHC/ABJ/CR/356/2015

BETWEEN:-

THE FEDERAL REPUBLIC OF NIGERIA COMPLAINANT

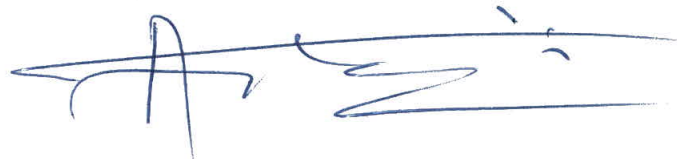
AND

**1. AUWALU SALEH
2. SURAJO UMAR DEFENDANTS**

RULING

By a motion on notice dated 16/11/15 but filed on 18/11/15, the Defendants seek for:-

An order admitting the Defendants/Applicants to bail pending trial.



The motion is supported by a 17 paragraph affidavit deposed to by Jamilu Mohammed Musa, on behalf of the two Defendants. The application is accompanied with a written address dated 16/11/15.

In reaction to the motion, the Complainant filed counter Affidavit with exhibits against the motion for bail. The Complainant counter affidavit is accompanied with a written address.

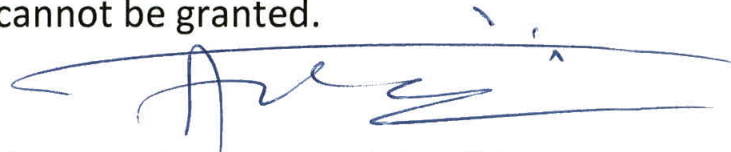
The two Applicants are standing trial on allegation of transporting 530 klg of cannabis sativa otherwise called Indian hemp.

I have read the affidavit in support of the motion dated 18/11/15 for bail and the written address to it. I have also read the counter affidavit of the Complainant together with it's written address in opposition to the motion for bail. Bail pending trial is at the discretion of the Court, and the discretion must be exercised judicially and judiciously, regard being had to the circumstances of each case. It is also the law that an Applicant for bail must place enough material before the Court for the exercise of the Court's discretion in his favour. See the case of **OLALTUNJI VS. FRN (2003) 3 NWLR PART 807, 406.**



In the instant case, the only grounds for the application is that the Applicants are drivers who were engaged to transport goods which they didn't know contained the cannabis sativa. That it was only after their arrest that the Applicants got to know that the goods they are conveying in Peugeot J5 with Reg. No. XA 535 NNG was cannabis sativa. This therefore means that the Applicants now knew the

goods were suspected to be illegal property after their arrest. In law, an Applicant for bail which is not supported by materials to influence the exercise of the Court's discretion cannot be granted.



Furthermore, the Complainant has deposed in paragraph 7 of its counter affidavit that if the Defendants are granted bail, they will continue in transportation of cannabis sativa not only to Jos but all over the Country as this incidence is not their first time. It should be noted that the Applicants have not filed Further Affidavit to deny the averment in paragraph 7 of the Respondent's counter Affidavit. One would have expected the Applicants to file Further Affidavit to deny the deposition in paragraph 7 of the Respondent's Counter Affidavit in view of the weighty allegation contained in the said paragraph. In law, facts deposed to in an affidavit, if not countered, are deemed accepted. If the consequence of not denying facts deposed to in an affidavit is to deemed those facts as having been admitted, then the present Applicants must be deemed to have admitted the deposition in paragraph 7 of the counter Affidavit, that is, if the Applicants are granted bail, they will continue to be transporting cannabis sativa all over the Country and not Jos alone. See the case of **THE HONDA PLACE VS. GLOBE MOTORS (2005) 14 NWLR PART 945 Page 273 at Pages 293-294 paragraphs F – A.**

In the final analysis, I have no hesitation in coming to the conclusion that the Applicants application for bail pending trial is devoid of any merit and the same is dismissed.

A handwritten signature in blue ink, consisting of a large, stylized 'A' followed by a series of loops and a horizontal line.

HON. JUSTICE A. R. MOHAMMED
JUDGE
2/3/16.

APPEARANCES:-

Mike Kassa Esq. for the Prosecution.

Izang Aware Esq. for the Defendants.