

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT MAITAMA COURT 4, FCT., ABUJA

BEFORE HIS LORDSHIP: HON. JUSTICE O. O. GOODLUCK

CHARGE NO. CR/8460/2019

B E T W E E N:

AUGUSTINE ODILI

} **APPLICANT/APPELLANT**

AND

FEDERAL REPUBLIC OF NIGERIA

} **RESPONDENT**

R U L I N G

The Applicant/Appellant is by a Motion on Notice brought pursuant to Section 158 and 416 of APJA and Section 36(1) of the 1999 Constitution of the Federal Republic of Nigeria praying this Court for an order to admit the Appellant/Applicant to bail pending the determination of the Appeal against the Judgment of this Court delivered in respect of the Judgment in Charge CR/487/2019 on the 29th July, 2019.

This application is predicated on 18 grounds. A 25 paragraph affidavit in support dated 23rd August, 2019 was deposed to by Mary Ngodoo Nyiekaa. Besides, a further and better affidavit dated 29th January, 2020 was also filed in furtherance of this application.

The facts in the affidavit in summary are that the Appellant/Applicant, a National Youth Service Copper was charged with cheating contrary to Section 320 of the Penal Code which offence attracts a 3 year imprisonment or an option of fine or both.

It is recounted by the deponent that the Appellant/Applicant cooperated with the prosecution throughout the investigation and entered into a plea bargain agreement pursuant to Section 270 of the Administration of Criminal Justice Act, 2015 in consideration for a lesser punishment.

By the terms of the plea bargain agreement, Exhibits "B" and "C" the Appellant/Applicant is to serve one month's imprisonment as well as to refund all the proceeds of crime. However, the Court in its Judgment of the 29th July, 2017 disregarded the plea bargain agreement and the statutory provision on the option of fine by imposing the maximum term of three years sentence against the Appellant/Applicant.

Aggrieved by the Judgment of this Court, the Applicant has now filed a Notice of Appeal, Exhibit E against this Court's decision.

The Appellant/Applicant contends that the issue for determination in the appeal is *recondite* and the sentence imposed

may outlive the determination of the Appeal. Aside from this, Appellant/Applicant contends that he needs to source funds in order to prosecute this appeal, Applicant has also complied with all requirements for the prosecution of the Appeal in order that it may be expeditiously determined. The Applicant is also willing and ready to serve the residue of his sentence in the event the appeal succeeds. The deponent also indicated that the Appellant/Applicant will neither interfere with the appeal nor will he commit any further offence if this application for stay is granted.

Appellant/Applicant in his further and better affidavit maintains that the trial Court deviated from the terms of the plea bargain. The Appellant is also apprehensive that in the event this appeal succeeds, the Applicant might have served all the sentence thereby making the appeal an academic exercise.

In reaction, one Ayidele Tenu, an investigator and a detective in the employment of the Respondent deposed to a 7 paragraph counter affidavit dated 10th December, 2019.

The fact contained in the affidavit in summary are that the Notice of Appeal did not raise any arguable and substantial issue of law. It is also asserted that the Appellant/Applicant has not

disclosed any special, unusual or exceptional circumstance for allowing this application. It is further disclosed that all criminal appeals involving the Economic and Financial Crimes Commission and the Independent Corrupt Practices Commission are accorded priority in the determination of Appeals arising from the aforementioned cases.

Given that the Appellant/Applicant is a convict, the prosecution reasons that a presumption of innocence no longer lies in his favour.

In sum, the prosecution is of the view that this application for bail ought to be disallowed. Both Counsel filed and exchanged written addresses.

Ruth Joshua Edward, counsel for the Appellant/Applicant in her written address formulated a lone issue for determination, that is, whether the Defendant/Applicant ought to be granted bail pending appeal in the light of the peculiar circumstances of this case and the provisions of Sections 158, 165, 270 and 416 of the Administration of Criminal Justice Act, 2015.

S.N. Robert Esq., Counsel for the prosecution in his written address dated 9th December, 2019 also formulated a lone issue for

determination that is, whether the Appellant/Applicant has placed sufficient material and/or shown any special or exceptional circumstances to warrant the Honourable Court to exercise its discretion admitting Applicant to bail pending the determination of this appeal.

Both issues raised by the respective Counsel shall be considered together minded that both issues address the same point albeit in different words.

Learned Counsel for the Appellant/Applicant has submitted that the Appellant/Applicant's right to a presumption of innocence still subsists having regard to the fact that his right to appeal against the trial Court's Judgment is a constitutional right. He reasons that the Appellant/Applicant has complied with all the conditions precedent for bringing an application for bail. Ruth Edward has argued that the consideration of bail is a purely discretionary power of the Court.

However, she reasons that the Applicant should also be given the benefit of doubt to prove his innocence by pursuing his appeal. She copiously relied on the fact that the Applicant was charged under Section 320 of the Penal Code which carries a maximum

penalty of 3 years sentence together with an option of fine. She posits that his appeal will avail him of another opportunity to seek for a milder sentence. Having placed all materials before the Court, Applicant's Counsel reason that the onus shifts to the prosecution to prove otherwise i.e. why the Applicant ought to be declined bail.

On the guiding considerations for bail, Learned Counsel for the Appellant/Applicant has submitted that this Court, just like the Court of Appeal under its Section 28(1) of the Court of Appeal Act and Order 16 Rule 13(6) of the Court of Appeal Rule, reserve the power to allow an application for bail pending the determination of the Appeal.

He commended this Court to **IKPA v. STATE 2008 ALL F.W.L.R. (PART 446) page 1959 – 1968 paras. G – B**, the Court held thus:

*“The combined effect of these two provisions is that the Court of Appeal has the discretion to admit to bail a person convicted on of an offence and sentenced to a term of imprisonment who has lodged an appeal against his conviction pending the determination of his appeal. **FASHEUN v. ATTORNEY GENERAL OF THE***

FEDERATION (2006) 6 N.W.L.R. (PART 975) page 141, BUWAI v. STATE (2004) 16 N.W.L.R. (PART 889) page 285”

Still on the considerations for granting an appeal it was held in the case of **AROWOLO v. STATE (2008) ALL F.W.L.R. (PART 404) page 1603 at 1608 – 1609 Paras. H – D** that bail will not be granted pending appeal save in exceptional circumstances or where the hearing of the Appeal will be unduly delayed.

I am inclined to allude with the submission of the Appellant/Applicant’s Counsel that in an application for bail such as this, this Court ought to look at the duration of the sentence vis-à-vis the time the determination the appeal will subsist.

In the instants case, the sentence appealed against is for 3 years, effective from 29th July, 2019. It is doubtful if the appeal will be heard and determined within the next one year, on this consideration, I am of the view that this Court ought to grant this application, however this is not the singular point upon which an application for bail should be considered.

Learned Counsel for the Appellant/Applicant referred to the case of **JAMAL v. STATE (1996) 9 N.W.L.R. (PART 472) page 352** there, the Court considered as in the instant case the behavior

of the convict, whether he had been of good behavior prior to the conviction and whether he is a first time offender.

In addition the Court will consider whether they are serious issues to be tried on appeal. Applying these considerations to the case before the Court, I am not left in doubt that the subject matter of the appeal raises serious issues, particularly when parties are mutually agreed on a plea bargain settlement and the Court ordered the maximum sentence prescribed under the law.

Indeed, the sentence admits of an option for fine for the offence charged. These factors in my view and I will so hold constitutes special circumstances mindful that the sentence ordered by the trial Court was made without a full-fledged trial.

Other considerations as rightly noted by the Appellant/Applicant are whether the Applicant will commit another offence or will not prosecute the appeal. Again, I have looked at the affidavit evidence before this Court and note that the prosecution has not controverted the affidavit evidence of the Appellant/Applicant neither has the counter affidavit disclosed or shown reasons why this application should be disallowed.

The only fact that one can decipher from the counter affidavit is that the Appellant/Applicant will jump bail. No evidence has been elicited in support of this assertion, for instance, does the Appellant/Applicant have a record of jumping bail prior to and during the pendency of the case at the trial Court? Paragraph 4(e) of the counter affidavit in the circumstance is a conclusion which renders the assertion inadmissible in the light of Section 115(c) of the Evidence Act of 2011.

The prosecuting Counsel has submitted that bail in the case of post conviction is only granted where the Appellant/Applicant is able to establish serious and exceptional circumstance for it to be granted. Counsel commended this Court to the decision in **MUNIR v. FEDERAL REPUBLIC OF NIG. (2009) ALL F.W.L.R. (PART 500)** where the Court held inter alia that:

“In the case of post conviction bail, the position is quite different. The burden this time around is on the Applicant because the constitutional presumption of innocence is gone by virtue of the conviction so also is the presumption in favour of liberty” per Jauro, JCA.

However, this is not to say that bail in the case of post conviction is not allowed, the onus is on the convicted to show exceptional circumstance. In **NOOKE v. FEDERAL REPUBLIC OF NIG. (2005) ALL F.W.L.R. (PART 245) 1083** the Court of appeal held thus:

“With respect to application for bail pending after conviction, the Court has the power to admit such Appellant to bail only under special circumstances. The instant fact is a situation required under application for bail pending appeal after conviction. Such Appellant, it must be observed has been lawfully convicted and can only be admitted to bail upon special circumstances. This is not the case here the onus is on the prosecution to show that an Applicant as the Appellant here is not deserving of being admitted to bail” per Chukwuma –Ene JCA at pages 1096 paras. C – D.

I have considered the facts presented by the Appellant/Applicant as hitherto noted in this application and I am of the view and will so hold that the Appellant/Applicant has discharged the onus to establish the existence of special circumstances why his prayers should be allowed.

In the light of the foregoing considerations, Appellant/Applicant's prayers are hereby granted, albeit on terms.

The Appellant/Applicant is hereby granted bail in the sum of ~~₦~~2,000,000.00 (Two Million Naira).

It is further ordered that the Appellant/Applicant shall present two sureties in the sum of ~~₦~~1,000,000.00 (One Million Naira) each.

Each surety shall not be below the level of a grade level 14 officer who is in the employment of the Federal Civil Service or any of the Federal Government Parastatals.

Both sureties shall be resident in Abuja. Proof of their residency shall be to the satisfaction of this Court.

The Appellant/Applicant shall deposit his International Passport with the Registrar of this Court until the determination of the Applicant's Appeal at the Court of Appeal.

O.O. Goodluck,
Hon. Judge.
5th May, 2020.

APPEARANCE

Sigis Agha Esq.: For the Applicant

Respondent are unrepresented.