

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT COURT 4, MAITAMA, F.C.T., ABUJA.

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

FCT/HC/M/846/2019

B E T W E E N:

KELVIN JOHN AUDU

APPLICANT/APPELLANT

AND

FEDERAL REPUBLIC OF NIGERIA

RESPONDENT

R U L I N G

The Convict/Applicant is by a Motion on Notice under reference M/754/2019 praying this Court for an order to be admitted to bail pending the determination of the Appeal filed against the Judgment of this Court delivered on the 29th July, 2019.

The Applicant has predicated this application on 17th grounds. A 28 paragraph affidavit in support deposed to by Sunday Andrew dated 11th October 2019 was filed by the Convict/Applicant.

In reaction, the prosecution filed a 9 paragraph counter affidavit dated 4th November, 2019 deposed to by Babangida Hamman, a litigation officer in the legal prosecution department of the EFCC.

Finally, a further and better affidavit in support of the Motion dated 29th January, 2020 was deposed to by Sunday Andrew, Applicant's brother, the further affidavit contains 23 paragraphs.

The facts contained in the affidavit of the Convict/Applicant in summary as that the trial Court sentenced him for 3 years without an option of fine for an offence under Section 320 of the Penal Code punishable under Section 322 of the Penal Code prior to the sentence the Convict/Applicant had entered into a plea bargain arrangement pursuant to Section 270 of the Administration of Criminal Justice Act, 2015 ACJA wherein the Convict agreed to admit the commission of the offence in consideration of a lesser punishment. By the terms of the agreement, the Convict/Applicant is to be sentenced for a month or with an option of fine. Contrary to the plea bargain agreement a 3 years sentence without an option of fine was imposed against him.

Aggrieved by the trial Court's decision the Convict/Applicant filed a Notice of Appeal on the 23rd August, 2019. Convict/Applicant contends that the appeal raises recondite points of law. He also reasons that the Notice of Appeal raises amusable and substantial issues of law, Applicant contends that he has special and exceptional reasons why this application should be granted.

Besides, he noted that he would have served the entirety of his imprisonment terms by the time the Appeal is determined.

He recounted that he is a first time offender who cooperated with the prosecution during investigation the Convict/Applicant is willing to serve the remainder of his sentence in jail in the event the Appeal fail. He also undertook not to communitally offend whilst being admitted on bail.

In opposition to this application, one Banangida Hamman, a litigation officer in the legal prosecution department of the EFCC confirmed the plea bargain agreement as well as the Convict/Applicant conviction which applicant is currently serving. He however refuted that the Convict/Applicant has disclosed any special and exceptional circumstance why he ought to be granted bail.

He contends that the Convict/Applicant will jump bail "...since he is already serving a prison sentence..."

In his reply in reaction to the further and better affidavit, the Convict/Applicant contends that the 3 years sentence ordered by the Court is in deviation to the plea bargain agreement.

It is also noted that the Convict/Applicant has paid for the transmission of records from the appeal unit of the FCT to the Court of Appeal Division. Convict/Applicant is apprehensive that he might serve his entire prison sentence whilst awaiting the hearing of his appeal. He

maintains that the grounds of appeal being filed by him are predicated on the misdirection in law hence his has a formidable appeal.

Finally, he disclosed that he has reputable sureties who can stand for him in the event that he is admitted to bail. Both Counsel filed and exchanged written addresses.

Sigismund Agba Esq., Counsel for the Convict/Applicant in his written address dated the 11th October, 2019 formulated a lone issue for determination as follows;

What is required of an Applicant for bail pending appeal for the Court to exercise its discretion and admit him to bail.

Ike Okonjo Esq., Learned Counsel for the prosecution in his written address dated 4th November, 2019 formulated a lone issue for determination that is whether the Applicant/Appellant has shown special and exceptional circumstance to entitle him to grant of bail.

Learned Counsel for the Defendant has rightly noted that the constitutional presumption of innocence no longer lies in favour of a Convict consequently the accused must establish exceptional circumstance why the application should be allowed.

Sigismund Agha Esq. has further commended this Court to the decision in **JAMMAL v. THE STATE (1996) 9 N.W.L.R. (PART 472) page 352 at 366** where the Court enunciated the circumstances a

Convict/Applicant must satisfy in order for the Court to exercise its discretion in his favour, they are;

1. If there is any prospect of success of the appeal
2. Where the hearing of the appeal is likely to be unduly delayed
3. Where the Applicant being a first offender had previously been of good behaviour.
4. The Court will have regard to the length of time which must elapse before the appeal can be heard and also the length of sentence to be appealed from.

Learned Counsel for the Convict/Applicant has urged to this Court to allow this application minded of the likelihood of the success of his appeal which grounds of appeal are predicated on error of law as disposed to the affidavit. He recounted that the trial Court did not take cognisance of section 270(15)(b) of the Administration of Criminal Justice Act, 2015 which provides that a defendant who is to be given a heavier sentence than what he has conceded to under a plea bargain agreement must be availed of the opportunity to proceed to trial upon which a fresh plea will be taken. Besides, he contends that the trial Court did not take into cognisance the fact that the convict was a first offender.

The attention of this Court was also drawn to the fact that the Convict has taken all steps to perfect the appeal and paid the necessary

fees drawing lessons from the **JAMMAL v. THE STATE case**, this Court is being urged to take cognisance of the protracted delay in the dispensation of the appeal having regard to the congested dockets of the Appellate Court. He reasons that the Appellant may have served the entirety of his 3 years sentence before his appeal is determined. In essence, he posits that the appeal may be a mere academic exercise in the event that the Convict serves his entire sentence prior to the determination of the appeal.

Defendant's Counsel urged this Court to take the position of the Court in the **ENEBELI v. CHIEF O.G. NAVAL STAFF (2000) 9 N.W.L.R. (PART 671)** where the Court held that in an application for bail by a convict pending appeal, the Court in the exercise of its discretion should consider whether the convict is a first time offender, whether he will not jump bail pending the hearing of the appeal and whether the accused would not have served his sentence before the hearing and determination of his appeal. See also the decision in **ANEH v. THE STATE (2004) 7 N.W.L.R. (PART 872) page** where the Court considered the Applicant being a first offender and of good behaviour as special circumstance another factor considered by the Court in Anih's case supra is whether the Appeal filed by the convict/Applicant raises substantial issues of law and whether the Appeal is manifestly contestable and there is a prospect of the success of the appeal. I have considered the counter affidavit filed by the prosecution in the light of the foregoing considerations prescribed by the Appellate

Court for the admission of a Convict/Applicant to bail. It is noted that the prosecution has disclosed that the Convict/Applicant has now disclosed any special circumstance.

Asides, from this, it is asserted by the Respondent “will jump bail since he is already serving a prison sentence” Going by the affidavit evidence of the Respondent I am inclined to hold that the Respondent has not shown cause why this application should be declined i say this having regard to Respondent’s assertion.

For instance, the fact that a person s serving sentence per se does not mean that he will jump bail credible evidence must be disclosed in persuading the fact that Convict/Applicant will jump bail for instance, the attention of the Court must be drawn to previous abuse of the bail such as whether there is any record that the convict jump bail whilst he was on administrative bail or whether trial was pending.

I am also disinclined to endorse the submission of the respondent that no special circumstance has been disclosed by the Convict/Applicant. It is on record that the Convict/Applicant is a first offender who cooperated with the prosecution in the plea bargaining negotiations and even paid our monies had and received. Besides, he has perfected his appeal. Other factors which have not been controverted by the Respondent is the Convict/Applicant’s assertion that the hearing of his appeal may be

determined after the three year sentence imposed on him, thus rendering the appeal nugatory.

Guided by the reasoning in the **JAMMAL v. THE STATE** *supra* and the Enebeh case cited *supra*, I am of the view and will so hold that the Convict/Applicant has disclosed special circumstances worthy of this Court, exercise of its discretion to allow this application. Accordingly, I am of the view and will so hold that this Court will be exercising its discretion, judiciously and judicially by allowing this application for bail pending the determination of the appeal.

Bail is hereby granted to the Convict/Applicant in the sum of ₦5,000,000.00 (Five Million Naira).

The Convict/Applicant shall present two sureties who shall not be less than Grade Level 14 in the Federal Civil Service or any of the Federal Government Parastatals. Such surety shall be resident in the FCT.

Proof of his residency shall be to the satisfaction of this Court. The Convict/Applicant shall submit his International passport to this Court Registrar who shall take custody of the Passport pending the determination of the Appeal.

O.O. Goodluck,
Hon. Judge.
13th May, 2020.

APPEARANCE

Sigismund Ayah Esq.: For the Applicant

Respondent is absent