



IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION (APPELLATE DIVISION)
BEFORE THEIR LORDSHIP:
HON. JUSTICE H. B. YUSUF (PRESIDING JUDGE) AND HON.
JUSTICE A. A. YUSUF (HON. JUDGE)



APPEAL NO: FCT/HC/CRA/9/2019
MOTION NO. FCT/HC/M/703/2020

BETWEEN:

SAMSON JOHN SANI.....APPELLANT/APPLICANT

AND

STATE SECURITY SERVICE.....RESPONDENT

RULING

This is an application by way of a Motion on Notice, filed on behalf of the Appellant/Applicant. The Applicant is seeking for bail pending the determination of his appeal before this Honourable Court.

The grounds of the application as set out by the learned counsel for him are:

- 1. The offences for which the Appellant was convicted and sentenced by the trial Court are bailable.**
- 2. The pending appeal filed by the Appellant/Applicant before this Court is challenging the Judgment by which the Appellant/Applicant was convicted and sentenced.**

- 3. The Notice of Appeal filed by the Appellant/Applicant contains substantial grounds of law and there are substantial issues of law for the determination of this Court.**
- 4. The Appellant/Applicant has complied with the conditions of appeal imposed on him as a result of which the record of appeal for prosecution of Appellant's appeal was compiled and transmitted to this Court.**
- 5. There is a likelihood of the Appellant/Applicant succeeding in the appeal.**
- 6. The Appellant suffers from serious ill-health and he needs special medical attention which the authority in charge of the Prisons is not able to provide and has not provided.**
- 7. The ill-health of the Appellant is of such nature that would affect other in-mates of the facilities where the Applicant is being held.**
- 8. The Applicant did not attempt or try to jump bail at the trial Court and will not jump bail if this application is granted.**
- 9. The hearing of Appellant's appeal is likely to be unduly delayed, considering his urgent need for special medical attention.**

- 10. There is the real possibility of the accused serving his complete sentence or a substantial part of it before the determination of his appeal.**
- 11. The Appellant/Applicant did not jump bail at the trial Court and will not jump bail but shall promptly respond to attend this Honourable Court to prosecute the appeal.**
- 12. The Appellant/Applicant is ready and willing to provide a substantial surety and meet other conditions as may be liberally directed by this Honourable Court.**
- 13. The Appellant/Applicant is a law abiding citizen and he has no criminal record and could be admitted to bail on his personal recognizance.**

The Appellant/Applicant is presently serving his jail term at the Kuje Correctional Services Center, Abuja. The application for bail pending the Appeal is supported by a 24-paragraphs affidavit deposed to by one Vera Samson Sani, the wife of the Appellant/Applicant. She has attached to it, the Judgment of the lower Court as Exhibit A, the Notice of Appeal as Exhibit B and the letter written by the Applicant's counsel to the Deputy Controller of Correctional Services.

The Respondent was served on the 01/12/2020 and no counter affidavit was filed by them. The fact that the Respondent did not

respond to the application, shall not make it an easy slide for the Appellant/Applicant. This Application shall be determined based on the evidence presented by the Applicant.

The summary of the case of the Appellant/Applicant is that he was convicted and sentenced for offences of personating a Public Servant, cheating by personation and criminal trespass.

In an application for bail pending appeal, the law is that before conviction, bail is a right in non capital offences, but where conviction has been entered, it ceases to be a right as the Applicant is expected to show special or exceptional circumstances to the satisfaction of the Court. See the case of **ABACHA V STATE 2002 LPELR 15 (sc)**.

It is the affidavit in support of the application that must contain depositions showing the exceptional circumstances, to enable this Court exercise its discretion judicially and judiciously.

It is the evidence of the deponent that the Applicant suffers from Hemorrhoids [Chronic Pile], and that he is known to have a history of Diabetes as a result of which, he has been on special diet before he was convicted and sentenced to Prison. That the Nigerian Correctional Center does not provide the Special Medical Services required to treat Hemorrhoids. That the Applicant now bleeds

constantly from multiple infections and has grown weak and lean. That the Appellant/Applicant is supposed to be on a special diet, but he is been subjected to junk foods against medical advice. That the other inmates are already complaining for fear of being infested by the Appellant/Applicant. That the Appellant/Applicant needs medical treatment from his Doctors as none is given to him in the Prisons.

It is further stated by a letter dated 23rd of September, 2020 that the Appellant/Applicant appealed to the Officer in Charge of Prisons to ensure that the Applicant is taken to one of the Hospitals in Abuja for treatment, but the letter was not accepted by the Officer in Charge of Prisons.

Learned counsel to the Appellant/Applicant filed and adopted his written address, wherein a single issue was formulated for determination, that is;

Whether it is in the interest of justice to admit the Appellant/Applicant to bail pending the determination of the appeal filed by him?

In arguing the sole issue, learned counsel to the Applicant submitted that the Applicant is entitled to bail by virtue of Sections 341(2) and 342(1) of the Criminal Procedure Code and Section 163 of the Administration of Criminal Justice Act, 2015. He further stated that

the Applicant has shown in his affidavit that he is in dire need of medical attention, as he has not received any treatment at the Correctional Center. Counsel referred the Court to the case of **ENEBELI VS CHIEF OF NAVAL STAFF (2000) 9 NWLR (PT 671) 119** and some other authorities. Counsel urged the Court to hold that the Applicant's health condition constitutes special and exceptional circumstances upon which the Applicant can be admitted to bail, pending his Appeal.

It is further the argument of the counsel to the Applicant that the determination of the Appeal might take a long time due to the number of appeals before the Court and that such delay will pose serious danger to the Applicant. Furthermore, counsel to the Applicant argued that due to the substantial issues of law raised in the Notice of Appeal, the appeal is likely to be decided in favour of the Applicant. Counsel urged the Court to take into consideration the conduct of the Applicant during the investigation and trial of the case that the Applicant abided by all the terms and conditions of his bail. He therefore urged the Court to admit the Applicant to bail, pending the determination of the Appeal.

We have gone through the records before us, it shows the Applicant has filed his Notice of Appeal and the record of the lower Court has been transmitted to this Court.

However, it is settled law that a convict does not enjoy the presumption of innocence and the chances for him to be admitted to bail, pending appeal is mostly on health ground of contagious disease or on exceptional circumstances. In **LABODE OLANIRAN VS. FEDERAL REPUBLIC OF NIGERIA (2016) LPELR-41300(CA)**, states thus:

“It is pertinent to state that the application is for bail pending appeal and the criteria are quite different from bail pending trial. In JOSEPH UGBOR VS. THE STATE (2010) LPELR-5047 (CA), this Court held that factors to be considered in granting bail pending appeal and after conviction, include that unusual or exceptional circumstances must be shown to the satisfaction of Court in the affidavit in support of the application to enable the Court exercise discretion judicially and judiciously. See DURO AJAYI & ORS v. THE STATE (1977) FCA 1”

The question we ask here is, whether the Applicant has presented the special or exceptional circumstances to enable him enjoy the discretion of this Court? The answer shall be deduced from the facts placed before the Court by the Applicant.

The Applicant has mainly stated his ill health and the congestion of Appeal Cases before this Court. In the affidavit before us, the Applicant's wife deposed to the fact that the Applicant is suffering from Hemorrhoids and also have a long history of Diabetes. She however failed to buttress these facts with credible evidence. It is the duty of every Applicant to present the necessary materials before the Court in support of his application to enable the Court exercise its discretion in his favour. See the case of **ADENIGBAGBE VS NIGERIAN CUSTOMS SERVICE BOARD (2018) LPELR-45337(CA)**

We are however quick to note, that the Applicant has compiled and transmitted the record of the lower Court to this Court. It therefore shows that the Applicant is ready to prosecute his appeal. See also the case of **ADENIGBAGBE VS NIGERIAN CUSTOMS SERVICE BOARD (SUPRA)**, where the Court of Appeal stated:

“...Now, what then are the principles of law to guide the Appellate Courts in considering an application for bail pending appeal against conviction? Judicial authorities on this guide are legion as are replete in the law reports to the effect that in matters of bail pending appeal, the principles to guide an Appellate Court in the grant or otherwise of bail to convict

include among others:- a: the Appellant has in fact lodged an appeal to; b: the Appellant has complied with the conditions of appeal imposed, which will show his seriousness; c: If the Appellant was granted bail during the trial, he has not attempted or tried to jump bail; d: that the admission of an Applicant to bail pending the determination of his appeal is at the discretion of the Court; e: that bail will not be granted pending an appeal except in exceptional or unusual circumstances or where the hearing of the appeal is likely to be unduly delayed; f: that in dealing with the latter class of cases, the Court will have regard not only to the length of time that will elapse before the appeal can be heard but also the length of the sentence to be appealed from, and that these two matters will be considered in relation to one another, and g: in the absence of special circumstances, bail will not be allowed unless a refusal will have the result of a considerable proportion of the sentence being served out before the appeal can be heard.”
[Emphasis ours]

It is stated in the affidavit in support, particularly paragraph 19, thus;

Considering the procedures of our judicial system which must be complied with and the congestion of cases, the hearing of Appellant/Applicant's appeal is likely to be unduly delayed and it will not be good for the Appellant/Applicant to continue in detention until the appeal is finally determined given his critical state of health.

Paragraph 20. There is the real possibility of the Appellant/Applicant serving his complete sentence or a substantial part of it in the Prison before the final determination of his appeal.

In ISAAC OMOREGBE VS DANIEL PENDOR LAWANI (1980) LPELR-2655(SC) where the Supreme Court stated thus;

"...Where evidence given by a party to any proceeding was not challenged by the opposite party who had the opportunity to do so, it is always open to the Court seised of the proceedings to act on the unchallenged evidence before it"

We have taken cognizance of the date the Notice of Appeal was filed by the Applicant, as well as the Judgment appealed against. The Judgment was given on the 20/02/2019. By way of calculation, the Applicant's jail term is to run for 3 years. The Applicant has already spent a year out of the 3 years jail term, without the hearing of the Appeal and a Panel is yet to be constituted to determine the Appeal. It is of note that this is the last Appeal Session for the year, we are therefore of the view that since the Applicant has shown diligence in prosecuting his appeal and it is also not in evidence that the Applicant did not abide by his bail conditions during his trial at the lower Court, it would be in the interest of justice to admit him to bail, pending the hearing and determination of his Appeal.

Accordingly, the Applicant/Convict is admitted to bail in the sum of N1, 000, 000 .00 (One Million Naira) only, and two (2) credible sureties in like sum. The sureties must be residents within the FCT, Abuja. One of the sureties must be a Civil Servant of not less than Grade level 14 in any of the Federal Ministry or Agency of the Government. The Applicant/Convict must perfect his bail conditions before he is released.

Signed

Hon. Justice H. B. Yusuf (Presiding Judge), and

Hon. Justice A. A. Yusuf (Hon. Judge)

17/12/2020