

**IN THE HIGH COURT OF JUSTICE OF THE FEDERAL CAPITAL TERRITORY**

**IN THE ABUJA JUDICIAL DIVISION**

**HOLDEN AT MAITAMA, ABUJA**

**BEFORE HIS LORDSHIP: HON. JUSTICE H. MU'AZU**

**ON MONDAY 16<sup>th</sup> DAY OF AUGUST, 2021**

**SUIT NO: FCT/HC/CR/213/2017**

**MOTION NO: FCT/HC/M/4400/2021**

**BETWEEN:**

**FEDERAL REPUBLIC OF NIGERIA ..... COMPLAINANT/  
RESPONDENT.**

**AND**

**DAUDA SANI HALADU ..... DEFENDANT/  
APPLICANT.**

**RULING**

The Applicant in this matter approached the Court vide a Motion on Notice brought pursuant to Section 6(6) of the 1999 Constitution of the Federal Republic of Nigeria CFRN (As Amended) and Section 162 and 165 of ACJA 2015 seeking the following orders.

- (1) An order admitting the Appellant/Applicant to bail pending the hearing and determination of the appeal already filed at the Court of Appeal.
- (2) Any other Order(s) that this Court may deem fit to make in the circumstance of this application.

The grounds upon which the application was brought are:-

- (1) That the Appellant/Applicant has health challenges of hypertension and diabetes that require regular drugs day and night.
- (2) That the Appellant/Applicant attended Court throughout the trial period and never attempted to jump bail till the day of his conviction on the 8<sup>th</sup> day of July 2021.
- (3) That he undertakes to prosecute the appeal diligently and expeditiously.

In support of the application the Applicant filed a 17 paragraph affidavit deposed to by one A. N. Muhammed.

Facts distilled from the paragraphs are that the Applicant dutifully attended his trial and never jumped bail. That an appeal has been lodged against his conviction reflected by Exhibit A (Notice of Appeal). That the Applicant has a terminal illness of hypertension and diabetes and is currently on drugs. That the Correctional centre cannot cater for him and he is likely to infect other inmates.

Finally, that the Applicant is the bread winner of his family with dependents and it will be in the interest of justice to admit him to bail.

In response to the application the Respondent filed a Counter Affidavit of 5 paragraphs deposed to by one Kehinde Lawal. He averred that the Applicant was convicted and sentenced to 12 years imprisonment and is likely to flee if granted bail.

He averred further that no medical report was filed by the Applicant and the illness, i.e Hypertension and diabetes are neither terminal disease nor communicable diseases. That the Correctional Centre can attend to the Applicant's medical needs. That no special circumstance was shown by the Applicant to warrant the grant of bail pending appeal.

Applicant filed a Further Affidavit where it was averred that the Correctional Centre lacked the capacity to attend to the Applicants medical needs. That appeal may last 2-3years.

Both parties submitted their Written Addresses.

Counsel for the Applicant on his address formulates a sole issue for determination.

“Whether having referred to the circumstances of this case,  
This Court has the power to grant this application.”

This same issue was adopted by the Counsel for the Respondent.

Following due consideration of the application and the processes filed and argument canvassed by Counsel on both sides, it is trite and agreed by parties that:-

- (a) Admission of an Appellant to bail is solely at the discretion of the Court.
- (b) Bail pending appeal will not be granted save in Special exceptional circumstances.

The question that then comes to mind is whether the Applicant has made a case of special circumstance.

The Applicant's case rest on two facts:-

- (1) That the Applicant has dutifully attended his trial and is not a flight risk and
- (2) That he is terminally ill, with hypertension and diabetes and being communicable diseases he may infect fellow inmates. The Counsel for the Respondent maintained that hypertension and diabetes are neither terminal illness nor communicable diseases.

It must be noted here that there is no evidence that the Applicant is ill, given that no medical report was attached to his application. It is my humble view that a medical report is needed to establish that the Applicant is indeed ill and the nature of his illness for the Court to reach a decision on whether it amounts to exceptional circumstances. That is, without a medical report the reliance of illness of the Applicant as reason for bail cannot be sustained. The settled position of law in our adversarial system of law is that the Burden of Proof first lies on a party who asserts a state of affair and seeks a favourable Court pronouncement on it to lead preponderance of evidence in proof of that, failing which he fails.

Assuming the absence of a medical report stating that the Applicant is indeed Hypertensive and diabetic is excused, where is the evidence that the disease is terminal and infectious? The Applicant has also failed to establish it.

Also, I must agree with the Respondent's Counsel that, the fact that the Applicant is a bread winner does not rise to the level of exceptional circumstance requiring the Court's equitable discretion to be exercised in favour of the Applicant.

In all, I find that no special or exceptional circumstance was established to warrant the Court to exercise its discretion in granting the Applicant bail pending appeal. Accordingly the application fails and it is hereby dismissed.

**SIGNED.**  
**HON. JUDGE**  
**16/8/2021.**

**LEGAL REPRESENTATION**

- (1) W. Y. Mamman Esq with A. N. Muhammad Esq. for the Applicant.
- (2) Rebecca Enenche Esq for the Respondents.