

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT MAITAMA

BEFORE HIS LORDSHIP: HON. JUSTICE Y. HALILU

COURT CLERKS :JANET O. ODAH & ORS

COURT NUMBER :HIGH COURT NO. 14

CASE NUMBER :MOTION NO: M/76921/2021

DATE: :THURSDAY27TH JANUARY, 2022

BETWEEN:

INSPECTOR GENERAL OF POLICE...RESPONDENT

AND

HARRISON NDIKA UCHENNAAPPLICANT

RULING

The Convict/Applicant approached this Honourable Court for the following:-

1. An Order admitting the Harrison NdikaUchenna now convicted to bail pending the determination of his appeal before the Court of Appeal Abuja Division.
2. And for such further or other Orders as this Honourable Court may deem fit to make in the circumstance.

The grounds upon which the application is brought are as follows:

1. The Applicant's grounds of Appeal raised substantial issues of law that are recondite.
2. The health condition of the Applicant has deteriorated in prison and he requires special

private medical attention to improve his health condition before his appeal is heard so as to not frustrate the exercise of his constitutional right of Appeal.

3. The Applicant did not abuse the privilege of bail granted to him in the trial court.
4. Due to back logs of appeals, the Applicant would have served substantial part of his sentence before the appeal is heard.
5. If the Appeal is successful, the Applicant would have served a substantial sentence in prison.

In support of the application is a 4 paragraph affidavit duly deposed to by one B.O Ekperobe, Esq. Legal Practitioner representing the Applicant filed on 8th of November, 2021.

It is the deposition of the Applicant that he was arraigned before this court for offences of giving false information, forgery and criminal trespass.

And the court on 11th October, 2021 convicted Applicant and sentenced him to:

- Count 1, 2 years imprisonment with an option of fine of N50,000.00 (Fifty Thousand Naira).
- Count 2, 1 year imprisonment with an option of fine of N50,000.00 (Fifty Thousand Naira).
- Count 3, 14 years imprisonment without an option of fine.
- Count 4, 14 years imprisonment without an option fine.
- Count 5, 1 year imprisonment with an option of fine of N50,000.00 (Fifty Thousand Naira)

That being dissatisfied with the judgment, the Applicant appealed to the Court of Appeal vide Exhibit “2” herein attached.

It is the averment of the Applicant that he has a history of diabetes, high blood pressure, kidney problem and hypertension which he has been managing while outside of prison for sometime now with appreciable success but his imprisonment situation is precipitously getting worse.

That since being imprisoned, he has been attending the medical facility in Kuje Prison, where concerned Doctors have been attending to him but his health situation is still degenerating. That it appears that Kuje Medical Facility is not well equipped to provide for his precarious health needs.

That the Appellant/Applicant is a first time offender and had previously been of good behaviour. That the Appellant/Applicant is married with 3 children who are of school age. Their responsibilities and sponsorship are vested in him. In addition, his aged mother who is seriously ill relies solely on him for her livelihood.

That releasing the Applicant on bail will enable him to prepare earnestly for his appeal and attend to his family responsibilities.

Applicant stated that if granted bail, he will not jump bail until the Appeal is determined. That he will provide reliable sureties and he is ready to abide by whatever condition of bail the court imposes.

In line with law and procedure, a written address was filed.

It is the submission of learned counsel that the law is settled that this Honourable Court has the power to grant bail pending appeal. The power of this Honourable Court to grant bail pending appeal is discretionary. In exercising the power to grant bail, this Honourable Court ought to exercise the power judiciously and judicially.

BAMAIYI VS. STATE (2001) 15 WRN 1 at 24; (2001)8 NWLR (Pt. 698) 270 at 292 was cited.

Learned counsel further submits, that the Supreme Court and Court of Appeal have laid down the basic criteria that will guide courts in exercising their discretionary powers in an application for bail pending appeal.

MUMIR VS. FRN (2009) 16 NWLR (Pt. 1168) P.481 Pp. at 497 – 498 Para C – D was cited.

OBI VS. STATE (1992) 6 NWLR (Pt. 267) 76;

FAWEHINMI VS. STATE (1990) 1 NWLR (Pt. 127) 486 and

JAMMAL VS. THE STATE (1996) 9 NWLR (Pt. 4472) 352 were cited to shed more light on this application since they are also predicated on ill health being a special circumstance which the trial court will look at in considering bail pending appeal.

Learned counsel concludes by urging this Honourable Court to admit the Appellant/Applicant to bail pending Appeal.

COURT:-

I have perused the affidavit in support of the application for bail pending appeal vis a vis the legal argument of counsel for the Applicant in support of the said application.

Bail is said to be pending appeal when Applicant has been refused bail at the trial court and then applies for bail at the Court of Appeal, or applies for bail after conviction pending hearing of appeal against conviction.

OLUSE VS. STATE (2015) LPELR 25584 (CA).

In both circumstance, there are conditions which shall be met by an Applicant for the Judge to exercise his discretionary power in favour of such an Applicant. With respect to bail pending Appeal, an Applicant shall show special circumstance or where the hearing of the appeal is likely to be unduly

delayed. The Court would naturally have regard not only to the length of time which must elapse before the appeal can be heard but also the length of the sentence to be appealed from. In the absence of a special circumstance, bail pending appeal after conviction would not be granted unless a considerable proportion of the sentence would be served before the appeal can be heard.

The principles guiding the grant or refusal of bail pending appeal are well enumerated in the case of *JAMMAL VS. THE STATE (1996) NWLR (Pt. 472) at 366*. It was held, that generally, the grant of bail to a convict sentenced to a term of imprisonment is not made as a matter of course. The principle of presumption of innocence of the Applicant no longer exists. Because of his conviction, he must show special circumstances to

be entitled to bail pending determination of his appeal.

See also the case of *MOHAMMED ABACHA VS. STATE (2002)5 NWLR – 15 (SC)*.

In an attempt to show special circumstance and also highlight that appeal against the conviction of the Applicant has been lodged at the Court of Appeal, Notice of Appeal and Medical Report were exhibited as “2” and “C1” respectively.

I have carefully examined the content of Exhibit “C1” which is the medical report dated 27th October, 2021 on the letter headed paper of Nasarawa State Hospital Management Board with reference No. **HMB/MCMG/03911/3478** signed by One Dr. David Titus U. as Ag. Medical Superintendent I/C.

Keeping in mind the essence of the medical report in determining the application of the conflict, it has become important to reiterate the content of said medical report i.e Exhibit “C1”, which I herein reproduce, as follows;-

“The above named is known hypertensive and diabetic patient with poor blood pressure and sugar control, complicated by acute injury. He is currently being treated and monitored at our facility. Please accord him all necessary assistance he may need.”

I have also read and assimilated the deposition in paragraph 3(i) and (j) of the affidavit in support of the application, wherein it stated that the convict has been attending the medical facility in Kuje Prison

Medical Facility is not well equipped to provide for his precarious health needs.

From all the submissions canvassed from the contents of the affidavit in support of the application for bail pending appeal and the said medical report, it has crystallized that there are a few issues/questions that have become pertinent to clarify.

1. At what point was the Applicant referred to Nasarawa State Medical Centre?
2. Where is evidence of the referral letter from Kuje Prison Medical Facility to Nasarawa State Medical Centre?
3. Why was the referral letter not exhibited, if any?

The law is trite, that averments contained in affidavit that are left uncountered or unchallenged are deemed admitted thus, Court is under an obligation to use such facts.

It is pertinent to note that although the Prosecution did not file a counter affidavit, the Applicant is under an obligation to convince the court into granting the application and not necessarily rely on the fact that Prosecution failed to file its counter affidavit.

Learned counsel for the Applicant laid emphasis on the issue of the Applicant/Convict being convicted and attending the Medical Facility in Kuje Prison, due to his health situation. It is my observation that the present application for bail pending appeal hardly holds water considering that

there is no exhibit accompanying this application to show that there was permission from any authority that concluded that Kuje Prison Medical Facility is not well equipped to cater for the health needs of the Applicant/Convict thus, directing that the Applicant/Convict be moved to Nasarawa State Medical Facility. It appears that the Applicant/Convict is an authority and thus, deemed it fit to transfer himself to Nasarawa State Medical Facility. Counsel must understand that the Court is not a wish granting factory. One cannot do as they please and expect the court to dance to their tune.

I am in no difficulty arriving at the conclusion that the Convict/Applicant has failed to persuade the Court that he is deserving of the discretionary favour of this Court to be exercised in its favour.

Application No. **M/7692/2021** dated 8th November, 2021 dated 8th November, 2021 for the bail of the Applicant/Convict pending appeal is accordingly refused for being unmeritorious.

Same is hereby discharged.

Justice Y. Halilu
Hon. Judge
27th January, 2022

APPEARANCES

M.A Awuta, Esq. for the Convict/Applicant.

Prosecution Counsel not in Court.