

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION (APPELLATE DIVISION)
HOLDEN AT COURT 10, GARKI, ABUJA

BEFORE THEIR LORDSHIP:

HON. JUSTICE S. B. BELGORE (PRESIDING JUDGE)

HON. JUSTICE M. B. IDRIS (HON. JUDGE)

CLERKS:

(1) GBENGA FATADE

(2) PRECIOUS DIKE

SUIT NO: CR/015/2021

APPEAL NO: CRA/12/2023

DATE: 30/5/2023

BETWEEN:

SOLOMON ADODO.....APPELLANT

AND

COMMISSIONER OF POLICE.....RESPONDENT

RULING

This Ruling concern the application vide a Motion on Notice number M/137/2023. The Motion is dated 18/5/2023 and filed same day. The prayer as contained in the application reads thus:

“An Order of the Hon. Court admitting the Appellant/Applicant to bail pending the hearing and determination of his appeal against the judgment of the Chief Magistrate Court 1 of the Federal Capital Territory holden at Zuba made on the

14/02/2023, which appeal is pending and subsisting before the Hon. Court.”

There are 9 grounds upon which the application is premised. The grounds as listed in the Motion paper are as follows:

- (a) The Chief Magistrate Court 1 of the Federal Capital Territory holden at Zuba on the 14/02/2023 convicted the Appellant/Applicant and sentenced him to 450 days at the Correctional Centre without option of fine for the offence of forgery, 150 days or a fine of N20,000.00 for impersonation and 150 days or fine of N20,000.00 for inciting public disturbance which sentence was made on the 06/03/2023.
- (b) The Appellant/Applicant has paid the options of fine for the offences of impersonation and inciting public disturbance since the 06/03/2023 and is now at the Correctional Centre Keffi on the conviction on the offence of forgery for which he was sentenced to 450 days.
- (c) The Appellant/Applicant is dissatisfied with the said judgment and has Appealed same to the High Court of the Federal Capital Territory sitting on Appeal with records of proceedings of the lower Court already transmitted and served.
- (d) That the Appellant/Applicant have already spent a substantial part of the term of imprisonment in the Keffi Correctional service centre and may end up serving out the whole term of imprisonment if he is not admitted to bail pending his Appeal against the said judgment.
- (e) The Appellant/Applicant’s grounds of Appeal amongst others, relates to the issue of lack of jurisdiction of the trial Court to entertain the case from the onset as well as errors in law which occasioned a grave miscarriage of justice.

- (f) That the Appellant/Applicant will suffer irreparable damage if it turns out that he serves out his prison term before his Appeal is decided one way or the other without being admitted to bail pending Appeal.
- (g) That admitting the Appellant/Applicant to bail pending Appeal will be in the best interest of justice in the circumstance of the Appeal and this application instant.
- (h) That the Appellant/Applicant's state of health has deteriorated and the clinic within the correctional facility could not be of any assistance.
- (i) That the Appellant/Applicant was taken by the Nigeria Correctional Service Keffi to the Federal Medical Centre Keffi who have been managing him but have no facility to treat the peculiar condition of the Appellant/Applicant and have referred him for further evaluation by an expert/specialist as their facility cannot handle the ailment of the Appellant/Applicant.
- (j) That it is in the interest of justice to admit the Appellant/Applicant to bail pending Appeal to enable him access medical attention and properly prosecute his Appeal.

In support of the application for bail pending appeal is a 23-paragraphs affidavits deposed to by M. Y. Tanko, a legal practitioner. The affidavit has 4 annexures attached to it to wit:

Exhibit A: Notice of Appeal

Exhibit B: Letter from Applicant's Counsel to the Officer-in-charge of Correctional Centre, Keffi.

Exhibit C: A Reply to the above letter by the Correctional Centre Authority.

Exhibit D: Medical Report from the Federal Medical Centre on the health status of the appellant/applicant.

There is also a written address at the instance of the applicant's Counsel in support of the application. Lastly, there is also a further affidavit deposed to by another legal practitioner – Patrick O. Akpogwu Esq. It is dated and filed on 25/5/2023.

On 25/5/2023, Mr. Eric Irehovude leading the Messrs Patrick Akpogwu and Laura David moved the application *brevi manu*. Counsel referred *inter alia* to the cases of **JAMMAL VS. STATE (1996) 6 NWLR (PT. 472) 352; OJO VS. FRN (2006) 9 NWLR (PT. 984) 105**. It is the firm submission of the learned Counsel that the appellant/applicant would have long served his sentence of 450 days before the conclusion of his appeal which in essence is a special circumstance; that the applicant was earlier granted bail by the trial Court and did not jump bail. And that the Correctional Centre authority themselves have confirmed that they have no facility to treat the applicant of his ailment.

For all the above submission, Mr. Irehovude urged us to admit the appellant/applicant to bail.

In opposition, the prosecution/Respondent filed a counter-affidavit of 11-paragraphs. It is dated and filed on 24/5/2023. There is also a written address at the instance of the prosecuting Counsel – A. S. Oyeyemi, urging us to refuse the application. According to the learned Counsel, it is not all ailment that would constitute special circumstances. Mr. Oyeyemi submitted that medical condition such as hypertension, diabetes, ulcer cannot constitute special circumstances as to lead to bail. Learned Counsel referred to the cases of **BODE GEORGE VS. FRN** and **OKENGBE VS. COP (2001) 5 NWLR (PT. 206)**. He finally urged us to refuse the application.

We have considered this application. The law is trite that bail pending appeal is not on the same wave length or pedestal as bail pending trial. For a convict to be admitted pending appeal, he/she must show special circumstance to justify it because the principle of presumption of innocence is no longer available to him/her. However, it is not the law, that once a person is convicted, then there can be no bail consideration in favour of such a fellow. Far from it. In fact by definition which has been given judicial consent, bail is defined as “to set at liberty a person arrested or imprisoned on security of being taken for his appearance on a day and place certain” see **EKWENGO VS. FRN (2001) 6 NWLR (PT. 708) 171; FRN VS. DANKAMA (1999) 2FHCLR 254.**

The relevant question at this juncture now is what is the merit of this application? Is there any special circumstance that can enure in favour of this appellant/applicant?

The applicant relied chiefly on his Medical condition. He has been diagnosed to be suffering from history of loss of vision; chronic itching, sensitivity to dust and dirt; Retinopathy and Maculopathy. These conditions affecting both eyes may not be contagious and no apparent fear that it could affect other inmates. See Exhibit ‘D’. But that is not all as to negate special condition. The same Exhibit ‘D’ reads and this is very important.

“Patient would require further evaluation and expert sub-speciality like photography and B scan which could not be done in our facility.”

Furthermore, a close look at Exhibit ‘C’ which is the letter from the Correctional Centre to the applicant’s Counsel, it reveals the helplessness and hopelessness of the authority of the Correctional Centre to provide him with the required medical assistance. Hence, they referred him to the Federal Medical Centre Keffi who by

Exhibit 'D' advised him to seek medical solution elsewhere. Against the background of the above patent fact, is the applicant to be left to his fate with the adverse consequences of loss of his two eyes? This cannot and must not be allowed to happen if we are to be civil and reasonable in our approach. This is more so, that the applicant would have spent his prison terms before the conclusion of this appeal. The situation is pathetic because what happens if he wins his appeal and the eye sight are lost by then? May God forbid.

In essence, all the above situation commend itself to us as special circumstance.

We must realise that what amounts to special circumstances or exceptional circumstances are very wide and the categories of such is NOT closed. It is a unique situation that is beyond ordinary streams of affairs. See Enforcement of Judgment by Chief Afe Babalola, SAN.

In effect, we find the health condition of the appellant/applicant when juxtapose with the sentence imposed and the fact of length his incarceration so far vis-à-vis the fact of the likelihood appeal not being heard soon to constitute special circumstance. This application therefore has considerable merit and the application succeeds.

Applicant admitted to bail in the sum of N1 million and two sureties in the same amount. The sureties must be civil servant not below grade level 7 working and residing within the FCT, Abuja.

HON. JUSTICE S. B. BELGORE
(Presiding Judge) 30/05/2023

HON. JUSTICE M. B. IDRIS
(Hon. Judge) 30/05/2023