

IN THE HIGH COURT OF FEDERAL CAPITAL TERRITORY
HOLDEN AT VACATION COURT 2, NYANYA, ABUJA

BEFORE HIS LORDSHIP: HON. JUSTICE MUAWIYAH BABA IDRIS

CHARGE NO. FCT/HC/CR/150/2012
MOTION NO./M/7999/19

BETWEEN

COMMISSIONER OF POLICE

.....

APPLICANT

AND

APOSTLE BASIL PRINCEWILL

.....

RESPONDENT

03/9/19

Parties are not in Court.

RULING

Motion No. M/8132/19 prays for:

1. An order admitting the Applicant to bail pending appeal.
2. And other orders this Honourable Court may deem fit to make in the circumstance.

The application is supported by a 6 paragraph affidavit deposed to by one Precious Nathan. 4 Exhibits are attached and marked Exh. 1 (Medical certificate); Exh. 2 (Notice of Appeal); Exh. 3 (Application for compilation of Record); and Exh. 4 (Judgment CTC).

Learned counsel filed a written address.

The complainant/Respondent filed a 24 paragraph affidavit deposed to by one Sgt. Jonah Ati. Learned counsel for the Respondent filed a written address.

The Applicant filed a reply on point of law.

I have read the affidavits of the parties and the written addresses of their learned counsel. The issue for determination raised by the Applicant's learned Counsel is whether the Court can grant bail pending appeal.

Having read the arguments of the learned counsel for the Applicant and the Respondent two things came to fore:

- 1) The proper authority to give information concerning the health/medical need of the applicant.
- 2) The type of medical condition that will warrant the grant of bail pending appeal.

In the case of MOSES EMMANUEL vs. FEDERAL REPUBLIC OF NIGERIA (2016) LPELR - 4129 (CA) it was held thus:

“ 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 its discretion judicially and judiciously.”

Since the fulcrum of this application is that the Medical condition of the Applicant is such that the prison authority cannot deal with. Hence the need for the Applicant to look for medical attention elsewhere.

The question is who now has the proper authority to give that information. The Court of Appeal answer the question in the case of ROLAND OKUSE vs. THE STATE (2015) LPELR - 25584 (CA) where the Court held:

“Since the prison authority is responsible for the welfare of the Applicant, the prison authority is the appropriate authority to give information on the medical needs of the Applicant.”

The averments in paragraph 3 i-iv did not come from the prison authority. No exhibit is attached to prove that the prison authority had taken the applicant to General Hospital Suleja on 10/7/19 and he was thoroughly examined. Exh. 1 the medical certificate is dated 10/7/19.

Now the medical condition that will warrant the grant of bail pending appeal.

In the case of ADEYEMI O. ABIODUN & ORS vs. FRN (2013) LPELR - 21465 (CA) It was held:

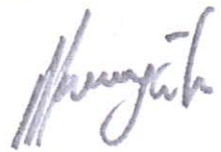
“For bail pending appeal or bail at all to be granted on ground of ill health, the ailment must be grave or virulent and dangerous to public health and/or be one that is capable of transmission to other human

beings..... Or there must be concrete evidence that medical facilities are not accessible to the convict if he is in prison custody.”

See also MR. OLUGBENGA ADEBISI vs. FRN (2017) LPELR – 41976 (CA) Exh.1 says:

“on examination, he was found to have hemorrhoid with co-morbidity of peptic ulcer disease”.

I am not satisfied that the ailment cannot be treated or the surgery cannot be carried out while the convict is still in custody of the prison authority. On the whole the application is lacking in merit. It is accordingly dismissed.



Hon. Judge

3/09/19

APPEARANCES

G.O. SALIFU Esq. for the Applicant.

SIMON LONGE Esq. for the Complaint.

U.C. IKEJI Esq. with EMMANUEL NWEKE Esq. watching brief for the nominal complainant.