INVOLVEMENT OF CIVIL/PUBLIC SERVANTS IN THE BAIL OF A DEFENDANT: A JURISPRUDENTIAL REFLECTION*

Abstract

This paper focuses on the bail system and the suretyship components of the administration of criminal justice within the Nigerian legal system. The paper, a library-based study, carried out a brief survey of bail system, the purposes of bail, types of bails, bail applications, discretion of court in granting bail, the duties and rights of surety. Special attention is paid to the pronouncement of the court in respect of the involvement of civil/public servants in the bail of a defendant. The paper posits that just as the court is bound to scrutinize the materials before it without considering any extraneous matter in determine whether to grant bail or not, the court should also abstain from imposing very excessive condition in respect of the status of a person to stand as surety for the defendant. The Court should not be seen to be discriminatory based on the social, economic and political status of persons to be designated as sureties. Therefore, it is submitted that insisting on civil/public servants as the only acceptable sureties is as discriminatory as rejecting civil/public servants as sureties for the simple reason that they are civil/public servants.

Keywords: administration of justice, bail, defendant, court, custody, recognizance, surety, terms and conditions.

1. Introduction.

As a preliminary point of law, the main essence of bail is to secure the accused presence in court to stand trial for the offence in which he is charged with.[1] The Fundamental underlining philosophy of criminal justice and the rule of law demands that a citizen should be punished for a distinct breach of the law and for nothing else.[2] The Right of bail, a constitutional right, is contractual in nature.[3] Explaining the philosophy of law upon which granting of bail is premised and the role of a surety in a bail system, the Nigerian Supreme Court in *Suleman & Anor v. COP Plateau State (2008),*[4] noted:

> The effect of granting bail is not to set the accused free for all times in the criminal process but to release him from the custody of the law and to entrust him to appear at his trial at a specific time and place. The object of bail pending trial is to grant pre-trial freedom to an accused whose appearance in Court can be compelled by a financial sanction in the form of money bail.

Thus, a surety is someone who agrees to take responsibility for a person accused of a crime while out on bail. Being a surety is a serious commitment.[5] Either at the investigation stage, pre-trial level or at trial proper, bail is granted to a suspect or an accused person subject to terms and conditions specified for the bail. Except in rare occasions, provisions of credible surety or sureties is one of the conditions for grant of bail. A surety is a citizen who voluntarily makes a commitment to the court to make sure the accused person appears before the authority that is granting the bail on the specific dates and times specified as terms of the bail and promises to make sure that the accused person obeys each condition of the bail order, also known as a recognizance.[6] The main condition that will encourage the grant of bail is that the accused person will be available to stand his trial. All other considerations in bail application are subject to the consideration whether the applicant will be available to stand his trail. No matter the gravity of the offence and the punishment the offence attracts, once the court is convinced that the applicant will be available to stand trial, he will be granted bail. On the other hand, no matter how minor the offence could be, if the court is of the view that the applicant will not be available to stand his trial, bail will be refused.[7] The main purpose of suretyship in the bail system is a further insured assurance that the accused person will be available to stand trial.

***By Olusegun Femi AKEREDOLU**, **B.A, LL.B, BL, LL.M, AICMC, PhD Candidate,** Adekunle Ajasin University, Akungba Akoko, Ondo State. State Counsel, Department of Civil Litigation, Ondo State Ministry of Justice, Alagbaka, Akure, Ondo State. Tel: +2348030814638, _2348088801271, E-mail:akeredolusegun@yahoo.co.uk; akeredolukaikai@gmail.com

[1] *Okomoda v. FRN & Ors* (2016) LPELR-40191 (CA); *Dokubo-Asari v. FRN* (2007) 4 FWLR (Pt. 395) 6747.

[2] Njoku, Donatus Ikechukwu 'The Bail Procedure and Constitutional Protection in Nigeria' (2019), 24 (11), IOSR *Journal of Humanities And Social Science (IOSR-JHSS)*, 15-31, 27

[3] *Mr. Kayode Akintola Samson v. FRN* (2020) *Legalpedia* (CA) 41180

[4] LPELR-3126 (SC); (2008) 2-3 S.C (Pt. 1) 185

[5] Daniel Brown, 'Acting as a Surety for a Criminal Bail Hearing', at https://www.danielbrownlaw.ca/legal commentary/acting-as-a-surety-for-bail/ Accessed 01/12/2020.

[6] *Ibid.*

[7] *Eye vs. FRN* (2018) 7 NWLR (Pt. 1619) 495.

2. Nigerian Bail System

Bail system is a composite process that leads to the temporary freeing or setting at liberty of a suspect arrested or imprisoned, upon others becoming sureties by recognizance for his appearance at a day and place certainly assigned, he also entering into self-recognizance.[8] In *Ugbabe v. Federal Republic of Nigeria* (2016),[9] bail is defined as the "process by which an accused person is temporarily released from State custody to sureties on conditions given to ensure his attendance in the Court whenever he is required until the determination of the case against him." In other words, 'bail is sureties taken by a person duly authorized, for the appearance of an accused person at a certain time and place to answer and be justified by law'.[10] By extension, bail is a process by which a person is released from custody either on the undertaking of a surety or on his or her own recognisance.[11] Under the Nigerian legal system, an accused person standing trial is entitled to bail as of right except where the offence committed by the accused person is a capital offence. An accused person who is not tried and convicted enjoys the constitutional presumption of innocence and this presumption entitles him to bail unless there are special reasons in favor of denial of bail.[12]

The presumption of innocence under the Nigerian Constitution and administration of criminal Justice system implies that no matter how seemingly serious an alleged offence committed by an accused person appears to be, 'he is still entitled to that presumption as an article of faith and a matter of right guaranteed by the Constitution, every Court has a duty to scrutinize allegations against accused persons, especially where frightening and high sounding counts of charges are read out against an accused person'.[13] In all the advance constitutional democracies of the world, liberty of every citizen is the norm and detention before trial is the carefully limited exception.[14]

3. Bail System and (De) congestion of Holding Facilities[15] in Nigeria

It has been argued that over - congestion of the holding facilities in Nigeria is extremely acute. Convicted prisoners in most of the correctional facilities in Nigeria are all lumped together with awaiting trials in the same cells. The greater proportions of prisoners in Nigerian prisons are those awaiting trial; remanded by the orders of the courts.[16] Bail system is one of the mechanisms for the decongestion of the custody, detention or holding facilities across the nation. Besides the final judgment in administration of criminal justice, bail is the most important and critical criminal justice decision to be made.[17] Because it occasions either justice or injustice to the three parties involved; the State, the victim and the defendant, decisions touching on bail is not to be made lightly. It is one of the discretions of the court expected to be exercised judicially and judiciously.[18] The decision to deny bail means more for a defendant's fate than any other decision besides arrest.[19] It also invariably means that, at least, an inmate is added to the already blistered holding facility. This simple ability to afford bail determines whether the defendant loses her job or keeps it, expose his/her family to danger, sorrow and hardship or not. Every time an application for bail is refused, the population of inmates in the holding facilities is increased.

To forestall the congestion of the holding facilities, the Courts are vested with the discretion to prescribe conditions for bail with due regard to the circumstances of the case. The conditions to be prescribed are not to be excessive.[20] The alternative to bail, where for whatsoever reason, the court is inclined to refuse bail where offence is ordinarily bailable, is accelerated hearing. The option of accelerated hearing has been judicially recommended in circumstances by the Supreme Court per Uwaifo JSC,[21] in which a Court finds that there is the probability of flight risk by a Defendant seeking to be admitted if so admitted to bail pending his trial, when it was stated inter alia thus:-

---

[8] *Caleb Ojo v. the Federal Republic of Nigeria* (2006) 9 NWLR (Pt.984) 103

[9] (CA/L/200/2016) [2016] NGSC 82 (27 MAY 2016) (CA/L/200/2016) [1960] NGSC 1 (26 MAY 2016)

[10] Per Hon Justice Tijjani Abubakar, J.C.A. in *Ugbabe v. Federal Republic of Nigeria (supra).*

[11] Bryan A. Garner: *Black's Law Dictionary*, 9th Edition (Thomson Reuters, Dallas, 2009), 160.

[12] See section 36 (5) of the 1999 Constitution of the Federal Republic of Nigeria (as amended)

[13] *Ugbabe v. Federal Republic of Nigeria (supra)*

[14] Baughman, Shima B. *The Bail Book: A Comprehensive Look at Bail in America's Criminal Justice System – Introduction* (Cambridge, University Press, 2017), 2

[15] Holding facilities mean custody where the defendant is being detained, i.e, Police or other security agencies' cells, hospital, Children Correctional facility, Correction facility

[16] Njoku, Donatus Ikechukwu 'The Bail Procedure and Constitutional Protection in Nigeria' (2019), 24 (11), IOSR *Journal of Humanities And Social Science (IOSR-JHSS)*, 15-31, 23

[17] Ibid., 5

[18] *Bamaiyi v. State & Ors* (2001) LPELR - 731 (SC)

[19] Baughman, *op.cit*.

[20] See Section 165(1) of the Administration of criminal Justice Act (ACJA), 2015

[21] *Bamaiyi v. State & Ors* (2001) LPELR - 731 (SC).

> Our criminal justice system has its stipulations and safeguards for the prosecutor, the accused and the victim. In the proper operation of that system, it can be said that it is in the interest of the society, and within those safeguards that if in an application for bail pending trial, there is good reason to believe or strongly suspect that the accused will jump bail thereby making himself unavailable to stand his trial and/or will interfere with witnesses thereby constituting an obstacle in the way of justice, the Court will be acting within its undoubted discretion to refuse bail.

4. Bail Application

In Nigeria, there are two broad classes of bail application: administrative application and Judicial Application. As the names implies, administrative applications are the applications made to administrative and or law enforcement bodies other than a court of law. On the other hand, bail application made to a court of law is a judicial bail. The class of bail to be applied for depends on the stage of the case. At the stage of (Police) preliminary investigation, the application is normal made as a matter of administration, thus, the bail is tagged as administrative bail. But once the investigating agency has shown its intention not to grant bail or the conditions of bail is deemed to be excessive, an application will have to be made to the Court. Also, when the matter is filed or pushed to the court after investigation, a bail application may be made to the Court pending the determination of the case in the appropriate situation.

Administrative Bail

The power of the police and by extension, other law enforcement agencies,[22] to release suspects taken to their custody is statutorily.[23] When any person is taken into custody for the purpose of investigation of any offence other than an capital offence, any Officer in Charge of a police station may[24], in any case, and shall, subject to the provisions of the extant laws, release the person so arrested on bail 'if it will not be practicable to bring such person before a court having jurisdiction with respect to the offence charged within twenty-four hours after he was so taken into custody'.[25] The Officer in Charge of the investigating formation or command on the undertaking given by the person being investigated, his surety or sureties, may release the suspect on bail. The undertaking is to ensure that the suspect report back to the place of investigation on a given date and time. The terms and conditions of an administrative is determined by the officer in charge of the investigation agency investigating the case in question.

Judicial Bail

Judicial bail application is one of the few interlocutory applications allowable in the administration of criminal justice. The court has inherent power to order the release of persons kept in custody on suspicion of having committed a crime. The order of release from custody is normally based on criminal allegation against citizen. The need to make bail application to a court may arise at any of the three stages of criminal administration of justice. In criminal procedure law, bail is of two types namely; bail before conviction, which is bail pending trial and bail upon conviction, which is bail pending appeal against conviction.[26]

Bail Pending Trial

Bail pending or before conviction may be made during the investigation of the criminal allegations or at the trial of the case. During the investigation of a case, the suspect or person accused of committing any offence may approach the court for an order to release him from the custody or detention of the investigating agency.[27] On the other hand, a court may by an order endorsed on the release warrant, direct that the person named in the warrant be released on bail on his entering into such a recognisance for his appearance as may be required in the endorsement.[28] According the applicable law in Ondo State,[29] the endorsement requires on the warrant shall specify the following:

(a) the number of sureties, if any;
(b) the amount in which they and the person named in the warrant are respectively to be bound; or are to provide as cash security;

[22] See section 28 (3) of ACJL, 2015
[23] Section 30 of ACJA, 2015, Sections 7 (1), 10 (2) and 24 (1) of Ondo State ACJL, 2015
[24]Officer in Charge of a police station, includes, when the officer in charge of the police station is absent from the station building or unable for any reason to perform his duties, the police officer present at the station building who is next in seniority to, or who in the absence of such officer in charge, performs the duty of such officer. See section 2 of ACJL, 2015
[25] Section 24 (1) ACJL, 2015
[26] *Frank Karkitie v. FRN* (2018) LER (CA) 33236, Ratio 1.
[27] Section 25 ACJL, 2015
[28] Section 39 ACJL, 2015.
[29] Nigeria.

(c) the court before which the person arrested is to attend; and
(d) the time at which he is to attend, including an undertaking to appear at a subsequent time as may be directed by any court before which he may appear.[30]

Bail before trial or pending the conclusion of trial or conviction is generally a right to a person accused of committing a crime, this is informed by the presumption of innocence that the accused enjoys under the constitution of the Federal Republic of Nigeria.[31] Thus, where the offence alleged against an accused person is not a capital offence but one which is ordinarily bailable, by virtue of Section 36 (5) of the Constitution,[32] which presumes the innocence of an accused person until proved guilty by the prosecution, the onus is on the prosecution to show why an accused person should not be admitted to bail pending his trial for an ordinarily bailable offence. This is so because the real focus and legal aim of bail is to ensure the attendance of an accused person at his trial. It is never meant to be denied as mere punishment. An applicant for bail pending trial may adopt the enforcement of Fundamental Human Rights procedures in respect of his arrest and detention, particularly where there is a delay in the trial of the case. Otherwise, the applicant will have to approach the court via Originating Summon for bail. However, no matter what method employed, an application for bail will succeed only when the applicant established his or her entitlement to bail. The law is that, a party who seeks a court order must do all in its power to establish that it deserves such an order.[33]

Bail Pending Appeal

Once a defendant is convicted at the conclusion of his trial, the presumption of innocence is gone. At that point, bail is no more of right to a convict because at that stage, the presumption of innocence has ceased and crystallized into conviction. The implication of this position of law is that, bail being a discretionary relief, it is sparingly granted after conviction but on the existence of exceptional factors. Bail after conviction and pending the determination of an appeal is granted based on prove of exceptional circumstance which must be shown to exist to the satisfaction of the court.[34] In the case of *Chief Olabode Georges & Ors v The Federal Republic of Nigeria,*[35] explaining the rationale behind bail pending trial, the Court of Appeal held as follows:

> The Court of Appeal will not as a rule grant bail to a prisoner pending the determination of his appeal unless there are exceptional and unusual reasons why bail ought to be granted to the appellant. 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. The exercise of the discretion must be judicial and judicious. A number of factors have been identified as constituting very exceptional circumstances.

The law is trite that in matters of bail pending appeal, the principles to guide an appeal Court in the grant or otherwise of bail to convict include among others:-[36]

(1) The Appellant has in fact lodged an appeal to the Court of Appeal which is pending.
(2) The Appellant has complied with the conditions of appeal imposed, and this will show the seriousness of his application.
(3) If the Appellant was granted bail during the trial, he has not attempted or tried to jump bail.
(4) That the admission of an Applicant to bail pending the determination of his appeal is at the discretion of the Court.
(5) That bail will not be granted pending an appeal saves (sic) in exceptional circumstances or where the hearing of the appeal is likely to be unduly delayed.
(6) That in dealing with latter class of case, 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

[30] Section 39 (2) ACJL, 2015.
[31] *Mrs. Mubo Ikotun v. FRN* & Anor (2015) LER (CA) 11657, Ratio 1.
[32] 1999 Constitution (as amended). See *Ogbhemhe v. COP* (2001) 5 NWLR (PT. 706) 215. See Also *Chinemelu v. COP* (1995) 4 NWLR (PT. 390) 346; *Emordi v. COP* (1995) 2 NWLR (PT. 371) 244; *Jimoh v. COP* (2004) 17 NWLR (PT. 902) 389
[33] *Chief Sunday Effiong Udo & Ors v. Chief Sunday Kofee Essien & Ors* (2014) LER (CA) 18411, Ratio 7. See *Nachpn v. Mhwun* (2010) 2 NSCR 101, 138
[34] See *Abacha v. State* (2002) 5 NWLR (Pt 761) 638, 674.
[35] (2010) LPELR – 4194 (CA).
[36] *George Ogbonna v. FRN* (2019) LER (CA) 11116, Ratio 1.

> (7) 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 before the appeal can heard.[37]

What however both types of bail share in common is that they are all granted based on the discretion of court and the Applicant has the duty to provide material facts to shown special or exceptional circumstance. - The compelling consideration for the exercise of discretion in considering bail application lies with and within the peculiar facts of the individual circumstances made out as exceptional.[38]

5. Terms and Conditions of Bail

Bail may be granted to a person detained in line with constitution's provisions unconditionally or upon such conditions as are reasonably necessary to ensure that he appears for trial at a later date.[39] The terms and conditions for bail in any case is at the discretion of the bail granting authorities. If a person is released by the police without appearing before a Justice of the Peace, they will be released on an undertaking given to the Officer in Charge (OIC).[40] If the accused is brought before a Justice in court, then typically the release is called a 'recognizance'.[41] Both types of documents contain conditions that have full legal effect and must be complied with. A recognizance in bail is the bail agreement, entered into between the accused person and the court or enforcement authorities, with or without sureties, where the accused person agrees to appear whenever he is required to do so in exchange for his temporary freedom. The agreement may have terms such as the accused person providing security to ensure compliance in the form of money or property, known as the bail bond.[42] The recognizance basically contains the number of sureties, if any, the amount to be forfeited on bound, the date and time the person released on bail must appear in a stated place and before a named authority.[43]

6. Cancellation of Bail at the Instance of the Attorney-General

There are basically three instances where bail granted to a suspect/defendant may be cancelled; i) at the instance of the Attorney-General, ii) where the defendant jump bail, and iii) where he committed another offence while still on bail.

At the instance of the Attorney-General

One of the statutory refocused under the Administration of Criminal Justice Act' is power of the Attorney-General of the Federation to move a Court to cancel bail earlier granted by the court.[44] Where a defendant has been admitted to bail and circumstances arise which, in the opinion of the Attorney-General, either of the Federation or a State, would justify the court in cancelling the bail or requiring a greater amount, a court may, on application being made by the Attorney-General of the Federation (or of State), issue a warrant for the arrest of the defendant and, after giving the defendant an opportunity of being heard, may commit him to prison to await trial, or admit him to bail for the same or an increased amount.[45] Some of the situation which may called for a cancellation of bail at the instance of the Attorney-General is where further information about the defendant is uncoveed, the extent of the crime committed or attempt of the defendant to become flight risk, he attempt to commit another offence, making overt efforts to manipulate evidence or in other way interfere with the course of justice.

Where the Defendant Jump Bail

A defendant on bail is said to jump bail when he refused, neglected or failed to make appearance in line with the terms and conditions as contained in his recognizance and the bail bond without any reasonable or tenable

[37] *State v. Jammal* (1996) 9 NWLR (Part 473), 384, pg 399, 400

[38] *Mrs. Mubo Ikotun v. FRN* & Anor (2015) *supra*.

[39] See section 35 (4) (c) of the Constitution

[40] Sections 30 and 31 of ACJA, 2015

[41] Recognizance may be defined as 'a recorded obligation, entered into before a tribunal, in which an individual pledges to perform a specific act or to subscribe to a certain course of conduct.

[42] Tardoo Ayua & Abubakar Gujbama Babaduna 'The Rights And Obligations of a Surety to Bail In Nigerian Under the Administration Of Criminal Justice Act', 2015, https://medium.com/@tardarcane/the-rights-and-obligations-of-a-surety-to-bail-in-nigerian-under-the-administration-of-criminal-5e8e54f9a56c. Accessed 24/07/2021

[43] Section 45 (2) ACJA

[44] See section 169, Administration of Criminal Justice Act, 2015.

[45] Yemi Akinseye-George, 'The Administration of Criminal Justice Act (ACJA) 2015: An Overview in Relation to Criminal Cases Adjudication in the Federal High Court' (2016).https://www.google .com/ur?q=http://nji.gov.ng/images/Workshop_Papers/2016/Refresher_Judicial_Officer/s02.pdf&sa=U&ved=2ahUKEwiZ7. Accessed 23/07/2018.

excuses. Where a defendant who jumped bail is rearrested, except why justifiable reason for his failure to appear in line with his bail condition is established, he would not be entitled to bail again.

Where the Defendant is Accused of Committing another Offence while on Bail

The court may likely cancel the bail granted the defendant who committed another offence, particularly an indictable offence, while on bail. In some jurisdiction, jumping bail it is an offence in its own right that may attract a penalty (in addition to the consequences of breaching bail).[46] The commissioning of another offence while on bail constitutes one of the exceptions under which a court will refuse to grant bail where bail is ordinarily of right.[47] If a person commits an indictable offence while on bail, this is a breach of bail that may lead to the bail being revoked.

Effects of Cancelled Bail

Where bail is cancelled because the defendant failed to appear to face his trial, the proper procedure to be followed before a surety can be made to forfeit his bail bond has been judicially established. The procedure is as follows:[48]

1. The order granting bail to the accused must be exhibited;
2. The bail bond executed by the surety must be exhibited;
3. The surety must be given an opportunity to show cause why the bail bond should not be forfeited i.e., he must be informed of exact nature of the breach complained of and given an opportunity to give evidence, call witnesses or give an explanation himself from the dock.[49]

7. Who can be a surety?

A Surety is a citizen who is primarily liable for paying another's debt or performing another's obligation. Ordinarily, the Court will not accept a citizen as a surety unless such surety is found to be fit person, suitable and proper for the purposes, in respect of a bail application, to ensure that the defendant stand his trial.[50] The sanctity of a surety is not taken for granted before the determination of the defendant's innocence. Thus, once it appears, mostly on the prompting of the prosecution or complainant, to the Court that a person who was fit as at the time the bail was granted, has for whatsoever reason become an 'unfit person', the Court has the duty to issue 'a summon or warrant for the appearance of the principal, and upon his coming to the court may order him to execute a fresh recognisance with other surety or sureties, as the case may be'.[51] This implies that it is statutorily recognised that a person who was fit and suitable as surety at the point a bail was granted may subsequently become unsuitable and unfit for the purposes of the bail. In that case, the Court has the discretion to yank him/her off as a surety with the consequential effect on the defendant to produce new (fit and suitable person as surety). The surety most of the times must be a resident within the jurisdiction of the Court.[52] By the operation of statutorily laws, 'no person shall be denied, prevented or restricted from entering into any recognisance or standing as surety for any defendant or applicant on the ground only that the person is a woman'.[53] Hence, a person at the age of accountability with means of livelihood is qualified as a surety once the court finds him or her fit and suitable.

A surety must be a responsible, responsive and reasonable citizen. Since (s) he has undertaken to be 'liable for paying another's debt', (s) he must have a verifiable means of livelihood and definite place of business or traceable permanent address of residence. The records of all these factors of good citizenship are expected to be kept by the registrar of the court and verified by the State or prosecutor.

The Nigerian law has constitutionally removed the discrepancy related to gender in posting of bail. Section 42 of the Constitution prohibits discrimination against persons based on gender or circumstances of birth. The law is now firmly established that no person can be lawfully denied, prevented or restricted from entering into any recognisance or standing as surety or providing any security on the ground that that person is a woman. It used to be the practice of the police and some Nigerian courts to refuse women or female to stand as surety, or sureties for suspects or accused persons.[54] The rationale behind this archaic practice was based on the fear that a woman cannot withstand the rigors or embarrassment that follows the suspects or accused

[46] Section 30 (B) of the Australian Bail Act, 1977
[47] See section 162 of the ACJA, 2015
[48] *FRN v. Alh. Abubakar Maishanu (2019) supra*, Ratio 11.
[49] *John & Anor., v. C.O-P* (2001) 2 ACLR 495: Amadu Tea Vs COP (1963) ANLR 502
[50] See section 57, Ondo State Administration of Criminal Justice Law, 2015 (ACJL)
[51] See section 163 of ACJL.
[52] Section 14 (2) of Ondo State Administration of Criminal Justice Law, 2015.
[53] See section 155 (3) ACJL.
[54] Njoku, *op.cit*, 25

person jumping bail.[55] Recently, it has been judicially mutedly suggested that civil and public servants should not be allowed to enter bail recognisance in criminal matters.[56]

8. Involvement of Civil Servants in Bail of Accused Persons in Criminal Cases

Over the time, civil and public servants are involved in the bail of persons accused of commission crimes at the police station and the courts (Magistrate's and High Court) for their (civil and public servants) of tracing and reliability as sureties. It is generally believed that civil and public servants (civil servants) are easier to trace whenever the need to bringing them before the bail granting authority arises. Perhaps, the other class of Nigerian with ease-to-trace tag is made up of the traditional rulers. It is logical to believe that a civil servant will stand as a surety only for a person who (s) he vouches for his or her readiness to stand as surety. Therefore, the courts and other bail granting authorities are tempted to deem civil servants as reliable, and depending on their level in service, sufficient and secured sureties. Given the peculiarity of Nigerian demographic reality, internal migration fluidity and corruption tendency, it is always difficult to rely absolute on information touching on contact address, place of residence, place of work etc., supplied by the to-be surety before the bail granting authority by citizens who are not civil servants and traditional rules. Thus, the Court often finds recourse in civil servants and traditional rulers for the purposes of granting bail to reliable sureties.

However, the involvement of civil servants in bail of accused persons in criminal cases was reviewed by the Court of Appeal in the case of *Dasuki v. Director-General, S.S.S.* (supra). Premised on the facts of the case, the Court opined that:[57]

> Let me quickly say that of concern it is to us that as a Court we must be ready and sensitive enough not to allow or do anything that will run afoul of the law. The issue of involving civil servants or Public Officers in the Public Service of the Federation and the state in bail of people accused of criminal offences has never been the practice in Nigeria or any part of the civilized world. It was an oversight on our part to allow it in. Our Civil and Public Service Rules do not have any room for it. Expecting a Level 16 Servant to own property worth N100, 000,000, will be running counter to the Public Service Rules and by extension the war against corruption. It is in this respect that I will act *ex debito justitiae* to ensure that the aspect of involving serving Public Servant not below the status of Level 16 Officer in either the state or Public Service of the Federation or any of its agencies be removed and I so order.

Touching matters connecting with the established surety system within the Nigerian legal system, the court in the case alluded to two key issues. First, was the prism that it is wrong for courts to insist on civil/public servants as the only acceptable sureties. The learned JCA saw it as an infringement of the rights of the accused persons to present any responsible members of the society as sureties, the whole essence of bailship and suretyship being to secure attendance of the accused in courts to answer their charges. And in this, there's no verifiable evidence cited by the courts to show that civil/public servants are in a better position to ensure the attendance of accused persons in courts. In fact, it would be noted, the civil/public servants standing sureties, do so in their personal and private capacities and not officially. Why treat one class of citizens above the others in the exercise of their personal civic rights without justification?

The second is the prism of public/civil service rules, which the Lordships of the court seemed, with the greatest respect, not to have fully appreciated. With due respect, to say because of public/civil service rules, civil/public servants should not serve as sureties, is to deny them their constitutional/civil rights to act as sureties to fellow citizens. It's also a corresponding denial of the accused persons' civil/constitutional rights to present, as sureties, responsible members of the society of their choices and; to insist they must look for a particular class of people without any legal or reasonable justification.

Science or logic has not shown, nor have the courts cited a legal or scientific reason to show that, civil/public servants are more responsible citizens than other categories of citizens. It's a limitation of the citizenship rights of both the accused and the civil/public servants and the citizens who are not civil/public servants and; therefore, discriminatory in the extreme and; cannot be justified in any democratic setting. Check the provisions of the African Charter on Human and People's Rights forbidding discrimination and inequality; and cite in conjunction with section 17 (2) (a) of the Constitution, to argue that, inequality of rights not

[55] *Ibid*
[56] *Dasuki v. Director-General, S.S.S.* [2020]10 NWLR PT.1731 PG. 136-143.
[57] *FRN v. Alh. Abubakar Maishanu* (2019) LER (SC) 38881, Ratio 1.

backed by any law could not be created by law. Courts interpret the law and not enact, especially when such restrictive construction has the effect of taking away rights positively conferred by laws. The ratification and domestication of the African Charter, by its provisions forbidden discriminatory and inequitable application of laws, have made justiciable and enforceable the provisions of section 17(2)(a) of the Constitution. Check also the relevant provisions of the Administration of Criminal Justice Act and Criminal Procedure Code dealing suretyship.

It is humbly submitted that both the current practice of our courts insisting on only civil/public servants or persons clothed with certain status and offices like kings, high chiefs, members of House of Assembly, clergymen etc., standing as sureties for high profile defendants and the now blanket ban on public/civil servants from acting as sureties, as propagated by the Court of Appeal in the instant case, are, with the greatest respect, axiomatically and legally unjustifiable, as shown already in this discourse. The yardstick for suretyship is, being responsible persons in the society, and; the hallmarks of being responsible are measured by the objective criteria of: payment of taxes, absence of criminal records and veritable address and respectable means of livelihood.

Once these are ascertained, there's no reason why a public/civil servant should be regarded as better surety than any other private citizen, more so, when the civil/public servant actually exercised his private and personal right of citizenship in acting as surety, as opposed to his official capacity, when securing bail. One may be forced to think that the cause of this anomaly could be located in the fears of courts that, private citizens may vamoose after securing bails while a public servant are not likely to because the belief that they have more respectable jobs. This is clearly a most brutal attack on dignity of labour; another instance of discrimination. And this becomes worse coming from a court of law created to eradicate discrimination and inequality in the society!

Again, it may be postulated that this fear, with respect, appears to arise from a misapprehension of the position of sureties in relation to the law, when an accused on bail jumps bail. The law is that, once there's no proof of connivance, if an accused jumps bail, the surety simply forfeits the bail bonds. And it would appear that, a private citizen, who has deposited his C-of-O with veritable address and place of work, would not simply vamoose after standing surety any more than a public/civil servant.

At this point, it is apposite to return to the issue of the public/civil service rules. If there are any civil/public service rules banning public/civil servants from acting as sureties, they would simply be void for their unconstitutionality or for being ultra vires substantive laws, discriminatory, segregating, and in this case, the *grundnorm* and African Charter, and; as such, void ab initio. Public/civil service rules are subsidiary legislations, which cannot compete with any substantive law. Therefore, the only yardstick to measure the suitability of a citizen as a surety should be credibility, respectability and presumed responsibility to produce the defendant released on bail to appear whenever his appearance is required.

9. Conclusion

Right to bail is a classified statutory right designed overtime to avoid doing irreparable injustice to a suspect in criminal justice administration. A defendant in a criminal trial is presumed as innocent until it is otherwise proved beyond reasonable doubt. One of the pillars of bail system is the need for the defendant to provide a reasonable surety to further deepen the assurance that (s)he, the defendant will stand his trial at the appropriate time. This brief study has shown that the right to bail may be hampered where the court demands for 'special surety' that is beyond the reach and affordability of the defendant. In that case, the court may be accused of taking with the left hand, the bail granted with the right hand. Therefore, in deciding who is a credible surety, the court should consider the suitability of a citizen as a surety based on credibility, respectability and presumed responsibility to produce the defendant released on bail to appear whenever his appearance is required from the scale of a reasonable man test. The Court, in considering application for bail is not permitted to predicate its decision on its whims, sentiments, discretion to grant bail by the Court must be exercised judiciously and judicially, in exercising the discretion a Judge is bound to scrutinize the materials before him without considering any extraneous matter. We humbly submit that this dictum of law should also be applied by the courts when considering who is a credible surety and nothing more. In short, the term bail must not be so difficult for the accused person to fulfil.