



NIGERIAN BAR ASSOCIATION

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BAIL CONDITIONS SHOULD NOT UNDERMINE THE ESSENCE OF BAIL

In recent times, we have observed with growing concern a disturbing trend in the administration of criminal justice in Nigeria, where courts and law enforcement agencies, including the Nigeria Police Force, EFCC, ICPC, and other security agencies, increasingly impose bail conditions that are excessive, impractical, and difficult to satisfy. The frequent insistence on sureties who are senior civil servants of specified grade levels, coupled with demands for landed properties of extraordinary value, has in many cases transformed bail from a mechanism for securing attendance at trial into a tool of pretrial detention. The consequence is that many persons who are constitutionally presumed innocent and have ostensibly been granted bail remain incarcerated because the conditions attached to their release are beyond their reach. This troubling development undermines the constitutional right to personal liberty, weakens the presumption of innocence, and defeats the very essence and purpose of bail within our criminal justice system.

We consider it necessary to reiterate that bail is a constitutional safeguard designed to secure the attendance of an accused person at trial while preserving his or her liberty pending the determination of guilt or innocence. It is neither a punishment nor a mechanism for imposing pre-trial incarceration by indirect means. The law is settled that bail conditions must be reasonable, practical, and capable of being fulfilled by the accused person.

The Supreme Court, in *Suleman & Anor v. Commissioner of Police, Plateau State* (2008), emphasized that the object of bail pending trial is to grant pre-trial freedom to an accused person whose appearance in court can be secured through appropriate conditions. Bail is not intended to create insurmountable obstacles that make release impossible.

We are particularly concerned by the increasing tendency to impose conditions that are disconnected from prevailing economic realities and often impossible to satisfy. Conditions requiring sureties who are serving civil servants on specific salary grades, ownership of landed properties of extraordinary value, or other burdensome requirements effectively convert the grant of bail into a denial of bail.

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Of particular concern is the continued insistence in some cases on sureties who must be senior civil servants, often on Grade Levels 16 or 17, and who must own properties worth hundreds of millions of naira. Such conditions have been strongly criticised by the appellate courts.

In *Dasuki v. Director-General, State Security Service & Ors* (2019) LPELR-49182 (CA), the Court of Appeal unequivocally condemned the practice of involving serving public officers as a mandatory category of sureties. The Court observed that such requirements are unknown to civilised legal systems and run contrary to public service regulations. The Court further noted that expecting a public servant on Grade Level 16 to own property worth N100 million would not only be unrealistic but could also conflict with public service rules and anti-corruption objectives.

The Administration of Criminal Justice Act, 2015, is equally clear on this issue. Section 165(1) provides that while the grant and conditions of bail are within the discretion of the court, such conditions must not be excessive. Judicial discretion, though wide, must always be exercised judiciously, reasonably, and in a manner consistent with constitutional guarantees.

We therefore restate that bail conditions must be tailored solely to ensure attendance at trial. They must never serve as instruments of punishment prior to conviction. Conditions that cannot be met amount in substance to a refusal of bail and contribute directly to pre-trial detention and congestion in correctional facilities.

We are equally concerned by the restriction of acceptable sureties to a particular class of citizens, particularly senior civil servants. This practice lacks legal, empirical, or rational basis. There is no evidence that civil servants are inherently more reliable as sureties than other law-abiding citizens. Such requirements unduly narrow the pool of eligible sureties and create artificial barriers to the enjoyment of a constitutional right.

Accordingly, we call on courts at all levels to remain guided by the Constitution, the Administration of Criminal Justice Act, and established judicial authorities when considering applications for bail. Bail conditions must be fair, reasonable, proportionate, and attainable. Courts must guard against imposing terms that render the grant of bail illusory or nugatory.

We also urge judicial officers to remain mindful that every accused person enjoys the constitutional presumption of innocence until proven guilty by a competent court of law. The administration of justice is best served when the rights of accused persons are protected while ensuring their attendance at trial through reasonable and lawful conditions.

As guardians of the rule of law, we must collectively ensure that the constitutional right to bail remains meaningful and effective. Bail should not become a privilege reserved only for those with extraordinary means or connections. It must remain what the law intended it to be, a mechanism for securing attendance at trial while preserving the liberty and dignity of persons who have not been convicted of any offence.



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