

Bail Bond and Forfeiture Actions in Nigeria: Lessons from the Case of Senator Ali Ndume

Saliu, Jimoh¹

Abstract

A crucial attraction of a democratic system is the wide array of inalienable rights it guarantees; such rights include the right to personal liberty and presumption of innocence of an accused person. However, the practical achievement and entrenchment of these rights is dependent upon certain essential tools and mechanisms. In the case of right to liberty and presumption of innocence, tools like bail, bail bond and sureties are of utmost importance to the criminal justice administration system if the rights are to be guaranteed. Troublingly, the general populace's perception or understanding of how these very important tools work under the law in Nigeria has been skewed for a while; a situation that requires clarification if the true dividends of democracy are to be realized. This paper seeks to clarify the misconceptions by examining the notion of bail, its history, its various types, the rights and obligations of sureties under the law, the recent Honourable Senator Ali Ndume situation and concludes by proffering recommendations to improve the general bail administration in Nigeria.

Keywords: Bail, Bond, Sureties, Criminality, Liberty.

1. Introduction

The issue of bail is very critical in the administration of the criminal justice system in Nigeria.² The logic behind the concept of bail is very sound; simply, it will be unfair to a suspect, an accused person or a defendant to remain continuously incarcerated pending the determination of their guilt in a case against them. The importance of bail therefore derives from the

¹ Lecturer, Department of Jurisprudence and International Law, Bola Ajibola College of Law, Crescent University, Abeokuta and Phd Researcher, University of Ilorin Email: SOJimoh@gmail.com

² Faruq Abass: Understanding the Concept of Bail in Nigeria. Article published online at <https://www.academia.edu> (Accessed on 1st December, 2020).

facts that in a democratic system, an accused person or defendant is still adjudged innocent until their guilt is established beyond reasonable proportion by a court of competent jurisdiction; and the strong protection of personal liberty in a democracy.³

The conditions of bail often differ from court to court but an often recurring theme has been the provision of surety who puts up a bond on behalf of the suspect, accused person or defendant (or the suspect, accused person or defendant himself puts same up). The rights and responsibilities of such a surety under the Nigerian administration of criminal justice has been a constant source of misunderstanding. The recent situation with Honourable Senator Ali Ndume, the Senator representing Borno South, has again brought these themes and their misconceptions thereof to the fore. This paper therefore attempts to clarify misconceptions surrounding these themes by exploring and examining their positions under the Nigerian criminal justice system and proffering practical recommendations to improve the administration of bail in Nigeria.

1.1 Brief History of Bail

The concept of bail first became well-articulated in the 17th century due to the excessive abuse and misuse of power by King Charles (I) who ordered the detention of some noblemen who declined to advance some loan to the king. The men in turn petitioned for habeas corpus under the Magna Carter contending that they should not be detained perpetually without their trial being conducted or their bail being taken.

The issue was adjudged an imprisonment of persons without justifiable reason. As a result of this, the Petition of Rights of 1628 emerged to limit the powers of the king.⁴ Aggrieved by this enactment, the king frustrated the Petition of Rights and denied liberty through procedural delay in granting the habeas corpus. Subsequently, the *Habeas Corpus* Act of 1679 was enacted to stop excessively long delays between custody and bail hearings.

Despite the Act being enacted, the king still devised a means of being a clog in the wheel of justice by imposing exorbitant and arbitrary bail sum

³ Section 36(5) of the Constitution of the Federal Republic of Nigeria, 1999 as amended.

⁴ The Petition of Rights of 1628 prohibited keeping a person in custody without being charged.

and stringent conditions on the accused persons who he did not intend to release. This act of the king further prompted the parliament to input a proviso in the Bill of Rights of 1689 that “. . . excessive bail should not be required” which introduced the principle of proportionality to bail. These series of events culminated in the birth of the Bill of Rights Amendment Act of 1828 and 1835 which repealed all prior existing laws on bail and consequently established the law on bail and the factors, conditions and principles influencing the grant or refusal of bail.⁵

1.2 Meaning of Bail

According to Black’s Law Dictionary, to bail is: “*To obtain the release of (oneself or another) by providing security for a future appearance in court.*”⁶ Similarly, the Longman Dictionary of Contemporary English defines bail as: “*Money left with a court of law to make sure that someone will return to court for their trial. If they do not come to the trial, the money is not returned to them.*”⁷

In line with the foregoing, bail has been literally interpreted to mean the temporary release from custody of an accused person, suspect or defendant upon the provision of a security to ensure their presence for future trial.⁸ The Nigerian Court of Appeal, in furnishing a judicial definition for the concept of bail held in the case of *Caleb Ojo v. Federal Republic of Nigeria*⁹ Per I.T. Muhammad JCA at p115 paras E-F. as follows:

Bail is defined as the freeing or setting of liberty of one arrested or imprisoned, upon others becoming sureties by recognizance for his appearance at a day and place certainly assigned, it is also entering into self-recognizance. The accused person/convict is delivered into the hands of sureties, and is accounted by law to be in their custody, though they may, if they will, surrender him to the court before the date assigned and free themselves from further responsibilities.

⁵ See N.D Ikechukwu: (The Bail Procedure and Constitutional Protection in Nigeria. *IOSR Journal of Humanities and Social Science (IOSR – JHSS)*, Vol. 24, Issue II, Series 5 (November, 2019) 15-31 e-ISSN: 2279-0837, P-ISSN: 2279-0845. Available on <https://www.iorsjournals.org>. Access on 4th December, 2020.

⁶ *Black’s Law Dictionary*, Tenth Edition, Bryan Garner.

⁷ *Longman Dictionary of Contemporary English*, New Edition.

⁸ See *State vs. Okafor* (1964) ENLR 96.

⁹ (2006) 9 NWRL (pt. 984) 103.

It is therefore crystal clear that the usual security demanded as a condition for bail is to ascertain the attendance of the defendant in court on the prescribed dates and same is released back to the defendant after the determination of the case provided the defendant has not breached the conditions or terms of the bail.¹⁰

2. Bail Under Nigerian Law

Generally, bail under Nigerian law has a direct link to the right to personal liberty of an accused person,¹¹ and on the principle of presumption of innocence of the accused person or a defendant.¹²

The 1999 Constitution of the Federal Republic of Nigeria does not provide for bail in express terms, i.e. it is not explicitly provided in the Constitution. However, recourse is always made to the provision of Section 35(1) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) which stipulates that: “Every person shall be entitled to his personal liberty and no person shall be deprived of such liberty save in the following cases and in accordance with the procedures permitted by law . . .”

Similarly, Section 36(5) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) states that: “*Every person who is charged with a criminal offence shall be presumed to be innocent until he is proved guilty.*”

The wordings of the above provisions are simple, straight forward and clear and does not involve any strain nor does it require any special knowledge to appreciate that under the 1999 Constitution of the Federal Republic of Nigeria (as amended), the liberty of the citizen is duly guaranteed and accused persons or defendants are to be presumed innocent until proven otherwise.

¹⁰ See Tardo Ayua: The Rights and Obligations of A Surety in Nigeria Under the Administration of Criminal Justice Act 2015. Available at <https://www.medium.com/tardarcane/therights-and-obligations-of-a-surety-in-nigeria-under-the-administration-of-criminal-justice-act-2015>. Accessed on 1st December, 2020.

¹¹ Section 35 of the Constitution of the Federal Republic of Nigeria 1999 as amended.

¹² J. I. Mantu: Bail and Bail Processes Under the Plateau State Administration of Criminal Justice Law (ACJL) 2018. SSRN Electronic Journal DOI: 10.2139/ssrn.3414169. Published online at [http://www.researchgate.net/publication/334381939_Bail_and_Bail_Processes_Under_the_Plateau_State_Administration_of_Criminal_Justice_Law_\(ACJL\)_2018](http://www.researchgate.net/publication/334381939_Bail_and_Bail_Processes_Under_the_Plateau_State_Administration_of_Criminal_Justice_Law_(ACJL)_2018). Accessed on 5th December, 2020.

In line with the Constitution's inference, bail may be defined to mean "the right not to be subjected to imprisonment, arrest and any other physical coercion in the manner that does not admit of (sic) legal justification in the circumstance."¹³ Similarly, bail is also embodied in provisions of other legislations such as Section 158 of the Administration of Criminal Justice Act (ACJA) 2015 which provides that: "*When a person who is suspected to have committed an offence or is accused of an offence is arrested or detained, or appears or is brought before a court, he shall, subject to the provisions of this Part, be entitled to bail.*"

Similar provisions can be found in the domesticated Administration of Criminal Justice Laws of the various states in Nigeria, for example, Sections 17 and 115 of the Administration of Criminal Justice Law of Lagos State (ACJL) 2015 mirror the above sacrosanct provisions on entitlement to bail.

3. Types of Bail

In Nigeria, bail as the release or grant of liberty to a person in custody can be classified into two categories, namely:

- (a) Bail by the police; and
- (b) Bail by the court pending trial.

3.1 Bail by the Police

The police are empowered to grant bail to suspects under certain circumstances.¹⁴ Bail by the police does not require any special procedure. It even need not be in writing. However, in practice, it is usually made in writing either by the suspect or his counsel or even the surety. In this case, the applicant undertakes to ensure the attendance of the suspect whenever required at the police station.

Police bail, when granted to a suspect, lasts as long as the matter is still being handled by the police and the complainant in the matter has not written any letter to withdraw the case from the police, i.e. for as long as

¹³ See J.O. Akande: Introduction to the Constitution of The Federal Republic of Nigeria 1999. MIJ Professional Publishers Limited 2000, pages 78 to 79. See also *Odogar v. A.G Federation* (1996) 6 NWRL (PE.456) 508 S.C.

¹⁴ Sections 62 and 63 of the Police Act.

the matter remains unsettled by the parties at the police station. However, as soon as the suspect is charged to court and arraigned, the defendant's prior admission to bail by the police lapses and a fresh application for bail has to be made in court for the release of the defendant. In an offence which is not of serious nature, counsel to the defendant will often make oral application for bail of the defendant or even just inform the court that the defendant is already on police bail and urge the court not to disturb same.

Bail at the police station which is also known as administrative bail is by law, free. However, in practice, money which does not have receipt or record (i.e. bribe) often has to be furnished before a suspect is granted bail. The police are empowered by the Police Act to grant bail.¹⁵ Section 62(1) of the Nigerian Police Act 2020 provides that:

Where a suspect has been taken into a police custody without a warrant for an offence other than an offence punishable with death, an officer in charge of the police shall inquire into the case and release the suspect on bail subject to subsection (2), and where it will not be practicable to bring the suspect before a court having jurisdiction with respect to the offence alleged, within 24 hours after the arrest.

Section 62(2) goes on to provide that:

The police officer in charge of a police station shall release the suspect on bail on his entering into a recognizance with or without sureties for a reasonable amount of money to appear before the court or at any police station at the time and place named in the recognizance.

Section 63(1) further states that:

Where a suspect is taken into custody, and it appears to the police officer that the inquiry into the case cannot be completed immediately, he may discharge the suspect on his entering into a recognizance, with or without sureties for reasonable amount, to appear at the police station and at such times as are named in the recognizance, unless he previously receives notice in writing from the police officer in charge of the police station that his attendance is not required.

By the above statutory provisions of the Police Act 2020, it is evident that the police have no reason to detain a suspect for more than 24 hours

¹⁵ Sections 62 and 63 of the Nigerian Police Act 2020.

where there is a court of competent jurisdiction within the radius of forty kilometers.¹⁶ Furthermore, save in capital offences, police bail is as of right. Unfortunately, the Nigerian experience is that unscrupulous elements in the Nigerian Police Force still detain suspects for more than 24 hours even where there is a court of competent jurisdiction close to the police station.

In summary, when a police officer arrests or detains a suspect in connection with an allegation or a reasonable suspicion of having committed an offence and is vigorously pursuing investigation of the matter, such officer is obligated under the law to release the suspect on bail or charge him to court within 24 hours of his or her arrest.¹⁷

3.2 Bail by the Court Pending Trial

The power of the courts to grant bail is generally well-established and trite. Bail by the court means bail granted by the various courts of law in Nigeria upon arraignment and pending the determination of the case against the defendant. This power of the court to grant bail must be exercised judicially and judiciously.

4. Conditions Attached to Bail

It is clear that bail is the constitutional right of an accused person in Nigeria, however, it must be stated that the police and the courts in Nigeria are not “*Father Christmases*” who dole out free and gratuitous gifts and as such, an accused person is only released from custody based on the fulfillment of certain conditions such as provision of a reliable surety who will stand for them,¹⁸ or the execution of bond of a fixed sum payment of which crystallizes if the accused person fails to appear in court on a day fixed for their matter – this is known as forfeiture of bond.

A defendant admitted to bail may be required to produce such surety or sureties as, in the opinion of the court, will be sufficient to ensure his appearance as and when needed in court. Section 167(1) and (2) of the Administration of Criminal Justice Act, 2015 provides as follows:

¹⁶ See Section 35(4) of the 1999 Constitution (as amended).

¹⁷ *Eda v. COP Supra.*

¹⁸ Section 167 (1) ACJA and section 118 ACJL.

- (1) A defendant admitted to bail may be required to produce such surety or sureties as, in the opinion of the court, will be sufficient to ensure his appearance as and when required.
- (2) The defendant or his surety or sureties may be required to enter into recognizance, accordingly.

As derivable from the above provisions of the Administration of Criminal Justice Act, 2015, the provision of surety for bail is not a water tight rule. Bail can be granted on self-recognizance in some cases. Recognizance is defined as a written or recorded obligation entered into before a tribunal, in which an individual pledges to perform a specific act or to subscribe to a certain course by conduct. Dwelling a little on this, a recognizance is 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 entail terms such as the accused person providing security to ensure compliance in the form of money or property, known as the bail bond. However, sometimes, the recognizance may require surety, where it is so, the surety provides security or bail bond which they may forfeit if the accused breaches the terms of the recognizance.

4.1 Who is a Surety?

A surety is someone who is primarily liable for paying another's debt or performing another's obligation.¹⁹ In respect of bail which is the focus of this paper, the surety undertakes to provide security for the release of the accused person and the promise that the accused honor the terms of the bail by appearing in court as required. By this very undertaking, the surety has put himself at risk of forfeiting the bail sum stated in the bond if the accused jumps bail. However, as earlier noted, the provision of surety for bail is not a watertight rule; bail can be granted on self-recognizance in certain cases wherein the provision of a surety will not be required.

4.2 Rights of a Surety in Bail Agreement

A surety performs a crucial and pivotal role in bail process and in the administration of criminal justice system because of the risks associated

¹⁹ See Bryan A. (Eic), Black's Con Dictionary (10th edn, Thomas West, 2014).

with an accused person being set free while their case is still pending in the court of law i.e. the accused person absconding. The court performs a dual role through surety-ship; firstly, it ensures that the accused person enjoys the rights donated to him by the constitution; and secondly, it reduces the risk of accused person escaping prosecution as a result of the grant of bail. The law protects a surety the same way it protects the accused person. The surety therefore enjoys some rights which include:

1. Right to decide at any time during the pendency of the matter for which he stands as surety that he no longer has interest in the surety-ship.²⁰
2. Right to retrieve any money or security deposited by the said surety on behalf of an accused person at the end of the trial so long as the accused abides by the terms of the recognizance.²¹
3. Right to be heard before the Court forfeits the surety's security.²² In the case of Lamidi Abutu in *Re A.K Kotun v. Inspector General of Police*,²³ where the accused person jumped bail, the Court ordered for the forfeiture of bail bond without hearing the Appellant who was a surety. The court on appeal held that the Appellant was not given fair hearing as the forfeiture was premature and that the ground for forfeiture was not proved.
4. Right to appeal an order of the court for forfeiture if he is dissatisfied with the order of the court.²⁴
5. Right to personal liberty and freedom of movement.

5. Obligations of a Surety in Bail Agreement

To every right, there is a corresponding duty or obligation. The most cardinal duty of a surety is entering into a bond or depositing an amount

²⁰ Section 177 of the Administration of Criminal Justice Act 2015 which provides that at any time within the duration of the case, a surety may request that he be discharged from the bail bond and after which the court will order for the re-arrest of the accused.

²¹ Section 165(3) of the Administration of Criminal Justice Act 2015.

²² Section 179(1) of the Administration of Criminal Justice Act, 2015 See also *Amadu Tea vs. COP* (1963) N.N.L.R 77, where the Court held that court must give a surety fair hearing before a bail bond can be forfeited.

²³ (1961) LLR 83.

²⁴ Section 186 of the Administration of Criminal Justice Act 2015 provides that "an order of forfeiture made under this Act shall be subject to appeal".

of money or other form of security on behalf of the accused to secure his bail.

In a situation where the accused person jumps bail or otherwise breaks any of the terms of bail, the surety is obliged to pay the security or bail bond, the court may institute proceedings to recover the amount in the manner prescribed by the Act for the recovery of its fines.²⁵ Where the surety is liable to pay a bail bond but he passes away before the payment can be made, his estate becomes responsible for the payment of the stated amount.²⁶ However, the above provisions only applies where the terms of the bail have been breached, in the event where there is no breach, the surety is not obliged to pay the bail bond.

Similarly, in a situation where the surety dies prior to the occurrence of a breach of the terms of the bail, it behooves on the court under section 176 of the Administration of Criminal Justice Act to issue a warrant or summons for the appearance of the accused and order him to execute fresh recognizance.

Furthermore, there is an implied obligation on the part of the surety to inform the court if he is in the know that an accused person is in the process of leaving the country or the jurisdiction of the court which granted bail so that the court will quickly give an order for his arrest.²⁷ It is uncertain whether this section really does place the burden of informing the court on sureties, but regardless of the provision, if a surety is aware of the accused person's intention to leave the jurisdiction of the court, he has a duty as a law abiding citizen to inform the court or other relevant authorities.

²⁵ See section 179 (2) ACJA 2015 if the surety is unable to recover the amount then surety may be sentence to jail for a duration not exceeding six month.

²⁶ See Section 179 (4) ACJA 2015.

²⁷ See section 174 which provides that "where an application is made before the court by information on Oath by a compliant, surety or other person that a defendant bound by recognizance to appear before a court or police officer:

(a) is about to leave Nigeria or

(b) for the purpose of evading justice, is about to leave or has left the division or district of the court before which he is to appear or in which he normally resides, the court may cause him to be arrested and may commit him to prison until the trial, unless the court considers it fit to admit him to bail on further recognizance".

6. Arrest of Sureties

In Nigeria, it is widely believed that if the accused person or defendant violates the terms of bail, the surety becomes liable to be arrested.²⁸ This line of thinking is clearly wrong as such practice will no doubt be bereft of legal justification in a democratic setting.

This widespread belief is in stark contradistinction with the values and virtues of a democratic dispensation as the surety is only meant to forfeit the sum contained in the bail bond and nothing more. Furthermore, even the forfeiture is not outright and is subject to the court's satisfaction that the surety should

forfeit same after giving him the opportunity to show cause or explain himself.

Nevertheless, under the Administration of Criminal Justice Act, 2015, the surety is not totally immune or protected from arrest or even imprisonment; a surety may be liable to imprisonment upon failure to provide the amount specified in the bail bond when required i.e. upon the defendant jumping bail or breaching any other term of the bail agreement. Section 183 of the Administration of Criminal Justice Act, 2015 for example supported this position when it provided for the sentences based on the amount in the recognizance. It states that:

Where a recognizance is ordered to be forfeited, the court having jurisdiction over the matter, may immediately or at any time after the order issue a warrant of commitment against a person liable whether as principal or surety under the recognizance, for any term not exceeding the terms prescribed in respect of a like sum in the scale of imprisonments set out in this act except the amount due under the recognizance is paid.

²⁸ See J.C. Azu criminal justice;implication of the suretiship and bail bonds. Published in daily trust on the 24th oct 20117 accessed on the 3rd Dec 2020. This is misconception.

It is therefore important to control the narrative and perception of the bail procedure under the Nigerian administration of criminal justice by emphasizing that the arrest and imprisonment of a surety is not automatic upon the accused person or defendant jumping bail but only occurs in the extreme circumstances where the surety fails to honour his or her promise to the authority granting bail.

7. Lessons from the Case of Senator Ali Ndume

In June, 2020, the Senator representing Borno South, Honourable Senator Ali Ndume stood surety for Mr. Abdurashed Maina, the former Chairman of the Pension Task Team who was facing trial for corruption. Senator Ali Ndume stood surety for Mr. Maina agreeing to a bail bond of #500,000,000 (Five Hundred Million Naira) and presented a property, a house in Asokoro District, Abuja as security.

As earlier explained, arguably the most important responsibility of a surety is the forfeiture of the bail bond upon failure of the defendant to appear in court on the required date. This exact scenario played out in this case as Mr. Maina failed to appear in court on the required date. Consequently, Senator Ali Ndume was remanded in Kuje Correctional Centre for five days in November, 2020. This unsurprisingly raises pertinent questions regarding the rights of a surety under the law, particularly in light of the general populace's already skewed perception of the topic.

It is therefore important to clarify that the imprisonment of Senator Ali Ndume was due to the perceived falsehood surrounding the security presented for the bail, i.e. genuineness of ownership of the property presented and not directly as a result of Mr. Maina jumping bail. For the sake of clarity, had there been no issue regarding the genuineness of the property presented, the Honourable Senator would have only had to forfeit same and go on living his life free of any disturbances as a Nigerian.

8. Conclusion

The concept of bail is directly tied to the constitutional right to personal liberty and the presumption of innocence of accused persons and is as such astoundingly crucial to a democracy. However, the smooth and risk averse operation of this important concept is dependent on certain conditions that puts the mind of the courts at ease, chief amongst these conditions is the provision of a surety who stands in and guarantees the appearance of the defendant in court on the stipulated date.

In line with the importance of the concept of bail, sureties are by inference also extremely important to the operation of a democracy and as such have rights and obligations under the Nigerian laws. The existence and protection of these rights are even more important in light of the public's perception that a surety might find himself replacing the accused if the defendant absconds.

The recent Honourable Senator Ali Ndume situation once again brought these perception and fears to the limelight as the Senator was remanded in prison for 5 days. However, a close examination of the situation reveals that the Senator's imprisonment wasn't merely or directly as a result of the disappearance of Mr Maina but as a result of the controversy surrounding the security tendered. As such, the rights of the surety in Nigeria are still very much alive and a surety's protection is sacrosanct under the law. The continued sustainment of these rights is essential and non-negotiable if Nigeria is to continue existing as a democracy.

9. Recommendations

In line with the established importance of the concept of bail and the consequent importance of sureties, the following recommendations are hereby proffered to strengthen Nigeria's bail administration system:

1. Review and introspection into the police bail system to ensure that suspects are not kept unlawfully in custody when all necessary laws allow their release on bail.
2. Restructuring of the police bail system to ensure that police bail is actually free and that an end is put to the exploitation of Nigerians.
3. Sensitizing the public about the very comprehensive rights belonging to sureties under the law to eliminate the fear and misconception of Nigerians in relation to the subject.
4. Setting up of a thorough vetting and confirmation system for sureties to ensure that the securities pledged by them are genuine so as avoid the consequential imprisonment of sureties which further perpetrates the public's already existing misconception.