An Appraisal of Emerging Issues in the Law and Practice Relating to Bail, Bondspersons and Forfeiture of Recognizance in Nigeria.

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Abstract

A basic constitutional right of a suspect who is held in the custody of any law enforcement agency, on allegations of commission of any offence not punishable with death, or who is arraigned in court on criminal charges, is the right to bail. This right is predicated on the principle that any person accused of or charged with the commission of a criminal offence is presumed innocent unless and until his guilt is proven beyond reasonable doubt in a court of law. Thus, every person suspected, accused of or charged with commission of a crime may be admitted to bail, pending the final determination of the case against him. In exceptional circumstances, bail may be granted also to a person who has been found guilty of a criminal offence, pending the determination of his subsisting or proposed appeal. Actual grant of bail by a court of law is discretionary which discretion must be exercised judicially and judiciously, and more often than not, an order granting the accused person

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bail is made either unconditionally or subject to some conditions usually referred to as the terms of bail, which may include self-recognizance, entering into a bond, deposit of money or production of some surety, sureties or bondspersons. Depending on the circumstances and the disposition of the court, these conditions are considered necessary in order to guarantee the availability of the accused person to face his trial, until the final determination of the charge against him. Where an accused person who is granted bail upon production of sureties or bondspersons, jumps bail, there is an obligation on the part of the surety/bondsperson to produce the accused person; else the surety may be liable to show cause before the Police or the court why the surety should not be made to forfeit the recognizance he entered into as a condition for admitting the accused person to bail. A lot of controversies and confusions has has arisen from the practice and use of bondspersons, the abscondment of an accused persons who is on bail, the practice of revocation of bail and forfeiture of recognizance in Nigeria. This paper is aimed to explain as well as examine the law and practice as they relate to grant of bail to suspects in the custody of law enforcement agencies, persons charged to court on commission of criminal offences, the use of recognizance, sureties or bondspersons in Nigeria, jumping of bail and and the concept of forfeiture of recognizance in Nigeria. The aim of the authors is two-fold; to clarify the law and principles for the benefits of all practitioners and stakeholders in criminal justice administration, and to examine the practical application of the law in this filed with a view to determining to what extant the practice in Nigeria is in tandem with extant law, reasonableness, and modernity as well as the extent of conformity of the law in Nigeria to international best practices.

1. Introduction

All over the world, the concern for security is the basic preoccupation of every individual, community or nation. It does not matter whether the community or nation is developed, developing, underdeveloped or about to go into extinction, every one desires security. This imperative by the realization that it is only under a secure environment that individuals within a state can engage in productive ventures to meet

their respective needs. One of the ways ensuring and securing a nation or community is that a suspect or an accused, who is alleged to have committed a crime, or about to commit a crime, is apprehended by the police. An allegation remains what it is until proven otherwise by a court of competence.

A suspect or an accused person is not expected to remain in police custody at the pleasure of the police or till infinity. The law provides that such a one be granted bail. Section 35 (4) CFRN 1999 [as amended] provides that any person who is arrested or detained shall be informed in writing within twenty-four hours, and in a language that he understands, of the facts and grounds of his arrest or detention… He shall be released either unconditionally or upon such conditions as are reasonably necessary to ensure that he appears for trial at a later date. This follows that every suspected or accused of a crime may be admitted to bail, with or without conditions.

2. Bail

When someone is arrested and charged with a criminal offence, he may be released if he signs a form saying he promises to attend court on the date given to him by either the police. If whatever reason the police refuses to release him, the person who has been charged [who is called the accused] will be taken to court where a decision to release him will or will not be made. In some cases, a bail hearing, which is like a short trial, is held and a judge or magistrate decides whether the accused will go out on bail.

Bail is the temporary release of an accused person awaiting trial, sometimes on condition that a sum of money is lodged to guarantee their appearance in court. It is a written permission from a court allowing a person charged with a criminal offence to be out of jail they wait for their trial, or some other result in their case[3]. Bail as a concept in law, means that an accused is granted release from custody from officers of

[3] 'Bail', https://lawfacts.ca accessed 18 November 2020.

the law [the police] and into the custody of a person that is normally known to the accused [sureties][4].

The etymology of the word 'bail' is derived from the old French term, *baillier*, meaning to take charge, guard, control – which of course leads to the handing over, or delivering of a person. Bail can thus be defined as "sureties taken by a person duly authorized, for the appearance of an accused person at a certain day and place, to answer and be justified by law[5]. In *Eze Moses Onyebuchi v Federal Republic of Nigeria & Ors*[6], the court defines bail as the process by which an accused person is temporarily released from state custody to sureties on conditions given to ensure his attendance to the court whenever he is required until the determination of his case against him. Ordinarily, a person charged with a felony other than one punishable with death may be granted bail if the court deems it fit to do.

The sureties make an undertaking that the accused will appear at a specified time and place to answer the charge against him. Failure of an accused to be present can mean the sureties may be liable to lose the amount of money that was issued when bail was granted. What is interesting is that money lodged as security must not be from the accused, and is considered a corruption of the bail process if an accused is also the surety. It is pertinent to state here that bail may be granted, in Nigeria, on self-recognition; what is more, when it is the police granting bail, it is free[7].

The grant of bail, even though provided by the Nigerian Constitution, is not an automatic right granted to anyone who is accused of a crime. This is also because there is no statutory or common law right to bail. In *Fred Chijindu Ajudua v Federal Republic of Nigeria & Anor*[8], the court held *inter alia* that the grant of bail is always at the discretion of the court but such discretion must be exercised both judicially and

[4] Find Law Australia, 'What is Bail?', https://www.google.findlaw.com accessed 18 November 2020.
[5] A.O. Onadeko, The Nigerian Criminal Trial Procedure [Lagos: Lannon Nigeria Ltd., 1998] p.11.
[6] [2007] CA/L/358/07 cited by Osita Adah, Nigerian Bail Application Report vol. 1 [Asaba: Ek'patris Services, 2011] p.18.
[7] That is what the law states but, pathetically, it is otherwise in reality. This is because the canker of corruption, though not an excuse, has eaten deep into the Nigerian police.
[8] [2003] CA/L/276/03.

judiciously. Section 118 (2) of the Criminal Procedure Act confers discretionary power on the court which power must be exercised judicially and judiciously. Judicial discretions have identified some factors as necessary in the exercise of this power. These criteria are however not exhaustive and may not be pertinent in all applications for bail. It is stated that in the consideration of bail it is not just the interest of the accused that is involved but that of the complainant as well as that of the society too. In any event "if there was an automatic right to bail it could be modified by statute"[9].

It should be pointed out that the right to bail, though a constitutional right, is contractual in nature. 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[10]." The contractual nature of bail is provided for in section 345 of the Criminal Procedure Code; which provides that any person is released on bail, he must execute a bond for such sum of money as determined by the police or court on the condition that such a person must attend at the time and place mentioned therein until otherwise directed. And if the person is released on bail, the sureties must execute the same or another bond containing conditions to the same effect.

2.1 Procedure for Bail

In an application for a grant of bail, substantive justice always prevails rules of procedure[11]. This is because, ordinarily, every man is presumed innocent and free until some set of facts which appear to directly implicate him are identified. The mode of applying for a bail to a High Court in the Southern part of Nigeria sitting as a court of first instance is usually made by motion on notice supported by an affidavit. Where an application for bail to the High Court is refused, a similar application cannot be made

[9] Chau v DPP [1995] 3 NSWLR 639 ALR 430.
[10] Adamu Suleiman & Mohammed Bello v COP & Anor]2008] SC 19/2005.
[11] Falobi v Falobi [1976] 1 NMLR.

to another High Court. The procedure is the appeal against the refusal to the Court of Appeal[12].

As a matter of practice, in an application for bail, the onus lies on the applicant to place before the court the considerations to show that he is entitled to be released on bail – whether it is bail pending investigation, or trial, or appeal. Thereafter the onus shifts on the prosecution/respondent to show that the applicant is not entitled to bail[13]. Generally speaking, the position of the law is that whether an application for bail is made orally in a situation where the accused is arraigned directly before the High Court or the application for bail is first made before a lower court and eventually gets to the High Court, the applicant must have some form of materials for the consideration of the High Court in dealing with the application. It is when the applicant places some materials for consideration of the curt that the onus will shift to the door-step of the prosecution to show cause why the bail should not be granted. However, the onus placed on the applicant for bail is not a high one, but one on a balance of probabilities[14].

2.2 Factors Regulating Grant of Bail

When an accused gets out on bail, there are certain conditions he will have to follow depending on the circumstances of the case. The conditions will vary, but they will be related to the charge against the defendant. For instance, if the accused is charged with assault, the conditions will likely include no physical or unnecessary physical contact with the victim, not to go to the alleged victim's home, workplace or schools, and no weapons. Nonetheless, the decision of whether or not an accused gets out on bail will be based on all relevant facts, but most times the courts will look at factors like:

2.2.1 The Nature of the Charge: the nature of the offence for which the accused person is standing trial is a crucial factor in the consideration of an application for

[12] F.E. Ojeih, D.O. Okanyi, J.N. Egemonu, Criminal Litigation in Nigeria: Practice and Procedure [Enugu: Chenglo Limited, 2019] p.248.
[13] Emmanuel Nwude & 6 Ors v FGN [2004] CA/A/51 C/2004.
[14] Chief Anthony Emeka Ani v The State [2011] CA/L/30/2011.

bail[15]. If for instance, an accused is standing trial for multiple counts of offences punishable with not less than 6 years imprisonment this may be a good ground not to grant bail.

2.2.2 The Severity of the Punishment: where an accused person has been charged with an offence which is serious in nature and for which the punishment prescribed for it may either be death or life imprisonment, the court is usually very cautious in granting bail. Thus the nature of the offense and the severity of punishment are factors to be considered in either the grant or refusal of application for bail[16].

2.2.3 The Character of Evidence: there may be cases where the police have charged a suspect but have insufficient details regarding the suspect's identity and address. In this situation a court can refuse bail until information is available. The defendant need not be granted bail where the court is satisfied that it has not been practicable to obtain sufficient information to take a decision in relation to bail.

2.2.4 Availability of the Accused to Stand Trial: where it appears to the court that having been previously granted bail the defendant has failed to surrender to custody and the court believes, in view of that failure, that if released on bail [whether subject to conditions or not] the defendant would fail to surrender, then he will be refused bail[17]. This is because the primary consideration for granting bail is to ensure the presence of the accused person at trial[18].

2.2.5 The Likelihood of the Accused Committing another Offence while on Bail: bail may not be granted to a defendant. Who it appears may or is likely to commit an offence while on bail. The court may ask itself why this particular defendant is likely to commit further offences if released on bail. This may be due to the defendant's extensive criminal record indicating that he is a prolific offender or because the defendant has a particular need to commit offences, for example to feed a drug addiction. Added to this, the defendant may not have a stabilizing influence in his life and even no fixed address. In some cases the risk of the commission of further

[15] Eze Moses Onyebuchi's case (n.4).
[16] James Danbaba v The State & 4 Ors [2000] CA/L/23/2000.
[17] Chief Anthony Emeka Ani v The State [2011] CAL/301/2011.
[18] Dokubo Asari v Federal Republic of Nigeria [2007] 12 NWLR (Pt.1048) 320.

offences may be due to the accused's close proximity to the victim; for instance in a domestic assault where the injured party fears reprisals if the defendant remains under the same roof[19].

2.2.6 The Likelihood of the Accused Interfering with the Course of Justice: this ground might be argued where, for instance, there is more than one co-accused who is still at large. It could also cover the situation where the defendant is implicated in a burglary or robbery or kidnapping and there is stolen property that has yet to be recovered. It also extends to those situations where a defendant may know or be related to a victim or witness and may well wish to contact the person. The case of *Alhaji Toyin Jimoh v COP*[20] is illustrative here.

2.2.7 The Criminal Antecedents of the Accused: this is very important in determining whether or not a defendant would or would not be granted bail. A first time offender is more likely to be granted bail than a habitual criminal. For instance in *Ajudua v FRN*[21], the applicant, who fell into the latter category, was refused bail. The court in its ruling referred to several other cases pending against the appellant.

2.2.8 The Ill-health of the Accused: apart from the likelihood of the defendant to make himself available for trial when granted bail, another important consideration next-in-line to that is the poor or ill-health of the defendant. A mere allegation of ill-health does not necessarily entitle a defendant to bail. But if it is of serious nature, that the defendant requires special care, this is most likely a good ground for the grant of bail; this was the holding of the court in *Fawhinmi v The State*[22]. So, where the ill-health is likely to affect the inmates where the applicant is detained, e.g. COVID-19, measles leprosy, yellow fever or tuberculosis, then the applicant will be granted bail. Again, where there is a cogent and convincing medical report issued by a medical professional or expert pointing irresistibly to the existence of the illness, and where

[19] M. Hannibal, L. Mountford, Criminal Litigation Handbook 2010 -2011 [Oxford: Oxford University Press, 2011] p.188.
[20] [2004] CA/L/3/2004.
[21] [2005] All FWLR (Pt.246) 1274.
[22] [1990] 1 NWLR (Pt.127) 486.

there is also proof to show that the detaining authorities lack adequate medical facilities to treat the applicant's ailment, then he surely will be admitted to bail[23].

2.3 Bail Conditions

In addition to the factors which a court considers before granting bail, a defendant's bail may also be granted either a conditional or unconditional bail. Nonetheless, it is very common for the court to impose conditions on an accused when granting bail. The list here is not exhaustive, each depends on its circumstances; the common bail conditions are:

- reporting to a police station [perhaps on daily basis or every other day except on Sundays],
- living at a specified place/alternate address,
- avoiding contact with prosecution witnesses,
- avoiding a particular area (this could require a defendant not to enter a particular building or area or go within a specified radius of it),
- requiring a surety; and/or
- surrendering a passport.

Thus, conditions may only be attached to bail where it is necessary to ensure that a defendant will surrender to custody, will not commit further offences, will not interfere with witnesses or obstruct the course of justice, and will not abscond[24]. To reduce the risk of absconding, a court can impose a condition that the defendant reside at a specified address and/or report to a police station. A condition could also be imposed to prevent the accused from entering a specified place, for instance, a poultry farm from which the accused habitually steals eggs and chickens. Where there is a risk of an accused committing further offences because of the accused's relationship with a

[23] See Ofulue v The State [2005] 3 NWLR (Pt.913) 571.

[24] Recently, the former Chairman of the defunct Pension Reform Task Team, Abdulrasheed Maina, absconded after being granted bail. The charged marked EFCC v Maina FHC/ABJ/CR/256/2019 is proffered against him by the Economic and Financial Crimes Commission for money laundering.

particular victim, a court could impose a condition that the accused reside at an alternative address and must not contact the injured party. These latter two conditions might also be used to prevent an accused from interfering with a witness or obstructing the course of justice[25].

It is pertinent to state that bail conditions are not imposed in vacuum or out of the blues. The decision to impose one or more conditions must be and is usually a proportionate measure to reduce the risk identified by the court. In negotiation a bail with the defendant, the defence counsel may need to offer or agree to the imposition of conditions subject to other considerations and the defendant's consent.

2.4 The Repercussions of Failing to Comply with Bail Conditions

If bail is granted subject to conditions, the importance of complying with the conditions will be explained to the defendant in court in a language he understands. The defence counsel is also expected to remind his client of their importance.

A failure to abide by any conditions of bail can lead to a defendant's arrest and reappearance before the court. Section 184 ACJA provides that where a defendant who is bound by a recognizance or bond to appear before a court or police station does not appear, the court may issue a warrant for his arrest. Again, a power of arrest is available where a police officer has reasonable grounds of believing that a person has broken, or is about to break a bail condition.

Consequently, if a defendant is granted bail [whether by the police or the court] and fails to surrender to bail or breaks any bail conditions, the defendant is liable to be arrested and held in custody. In addition, if the failure to surrender is admitted or proved, the defendant commits the criminal offence of absconding. In the event that

[25] M. Hannibal, L. Mountford (n.17) 186.

the accused fails to appear and answer his/her bail, there are three main consequences of such actions:

- ❖ the surety/bond is forfeited;
- ❖ if the accused is apprehended and is in the custody of the police, there is likelihood that the person will unlikely be granted bail again; and
- ❖ the action of absconding can be used as evidence in trial.

3. Surety/Bondspersons

In bail matters, a surety is someone who primarily undertakes to provide security for the release of the accused and the promise that the accused honours the terms of the bail agreement by appearing in court as required. He is someone who comes to court and promises a judge to supervise an accused person while they are out on bail[26].

A court may require a defendant to provide a suitable surety or sureties before granting bail. Such a surety promises to forfeit a sum of money fixed by the court by signing a type of bond called recognizance; by doing this the surety risks losing some or all of the money they have promised to the court if the accused doesn't follow one or more of the bail conditions or fails to show up to court when required.

The amount of recognizance is determined by the court and depends on the surety's financial resources. If and where the defendant fails to answer bail, the surety is liable to forfeit whole or part of the recognizance. For instance, recently the Federal High Court sitting in Abuja summoned Senator Ali Ndume who stood surety for Abdulrasheed Maina, the absconded former Chairman of the defunct Pensions Reform, to show cause why he should not forfeit the ₦500 million bail bond to the Federal Government of Nigeria[27].

[26] 'Surety', https://lawfacts.ca accessed 25 November 2020.
[27] 'Breaking: Court Revokes Maina's bail, Orders Trial in Absentia', <https//dnllegalandstyle.com/2020 accessed 18 November 2020.

A surety must be a suitable person who will be required to attend court and give evidence on oath, confirming amongst other things, his financial resources, his character and his relationship to the defendant. It is important to note that nowhere in our laws is the qualification(s) of a surety provided, however the qualifications listed above are usually those of international standards and our courts require such of sureties. Basically, a surety's responsibilities are to:

- make sure the accused attends court when he is supposed to; and
- make sure the accused follows the conditions of his bail.

He has to **make sure** he does all these; that is why he is called a **sure-ty**![28]

It is imperative, and interesting too, to point out that the old practice of not allowing the female folk to stand as sureties in Nigeria for a defendant or suspect who seeks bail has been abolished by the provisions of section 167(3) Administration of Criminal Justice Act [ACJA]. The provision in clear terms provide that:

> A person shall not be denied, prevented or restricted from entering a recognizance or standing as surety for any defendant or applicant on the ground only that the person is a woman.

It therefore follows that the above provision of ACJA conforms to section 42(1) CFRN 1999 (as amended) against discrimination by reason of gender. Where a defendant breaks one or more of the bail conditions while the suretiship lasts, the surety is expected to:

- Call the police if he finds out that the accused is not following his bail conditions, including the condition to attend court when required. This is because the surety is the accused jailer in the community in the eyes of the court and he is required to enforce the bail conditions.

[28] This comic side to the term is our own coinage.

- If the accused absconds or is charged, and either way pleads guilty or is found of breaking any of the bail conditions or failing to attend the court; the court may (is most likely) ask the surety to pay the money that he promised to the court when he agreed to be surety. If the court does this, there will be a hearing held where the surety will get a chance to explain to the court or a judge why he should not pay the money to the court. At the end of this hearing, the judge will decide whether or not the surety will have to pay all, or some, or none of the money that was promised. If the surety pays the money it is called forfeiture.[29]

A surety may be discharged upon an application to the court to discharge the bond either "wholly or so far as it relates to the applicant"[30]. Section 177(2) ACJA provides that:

> On an application under subsection (1) of this section, the court shall issue a warrant for the arrest of the defendant on whose behalf the recognizance was executed and on his appearance shall discharge the recognizance either wholly or so far as it relates to the applicant and shall require the defendant to find other sufficient sureties or meet some other conditions and if he fails to do so, may make such order as it considers fit.

It is imperative to point out that a court can require a defendant to deposit a security before being released. This is rather like a bail bond. It requires the defendant or someone on her behalf to deposit a sum of money or other valuable security as a guarantee to ensure attendance. The sum can be forfeited if the defendant absconds.

[29] This is the practice not only in Nigeria but also in Ghana, Canada, Australia, and the United Kingdom.
[30] ACJA, section 177(1).

Bondspersons are like sureties[31]. A bondsperson may either be a private individual or individuals or corporate bodies who are registered and licensed as such within the jurisdiction of the court in which they are registered. Section 187(1) ACJA provides that the Chief Judge of the Federal High Court or of the High Court of the Federal Capital Territory, Abuja, may make regulation for the registration and licensing of corporate bodies or person to act as bondspersons within the jurisdiction of the court in which they are registered. Anyone found engaged doing the business of bondservice in contravention of section 187 (1) ACJA becomes criminally liable and will face the wrath of law. On the strength of section 187 (5) ACJA a bondsperson stands on the pedestal as a surety, and is expected to be persons of unquestionable character and integrity[32]. One distinguishing feature between a surety and a bondsperson is the power of the bondsperson to arrest a fleeing suspect or defendant who is trying to jump bail; such a defendant or suspect shall be taken before the court within 12 hours[33].

4. The Duties of the Prosecution and Defence Counsels in Relation to Bail

On daily basis, except on Sundays and public holidays, court hear arguments on why a defendant should or should not be granted bail. The prosecuting counsel may argue that the defendant may abscond or commit further crimes or interfere with witness and obstruct the course of justice. These grounds are further strengthened if the circumstances point to the fact that the accused is charged with a capital offence, rape or attempted rape or has been previously convicted of the offence in question.

The prosecuting counsel may argue that the accused may not be trusted to remain within the jurisdiction of the court or even in the country to answer to the charges

[31] The difference is that while bondspersons are business people (for they hope make gain out of the defendant), sureties are not.
[32] ACJA, section 187 (6).
[33] ACJA, section 188.

against him; or that the defendant had once jumped bail and was rearrested. Thus, the prosecuting counsel is to protect the interest of both the State and the complainants,

The defence counsel on the other hand, should not just fold his arms and watch. He is to protect the interest of his client to see that justice must not be done but must be seen to have been manifestly done to his client; he must not ensure that the defendant is not shortchanged in the bail application. So, it thus no harm to remind the court of the presumption in favour of bail, especially if his client is a first-time offender. Again, if the accused is generally known to be a person of good character in his vicinity, place of work or business, the defence counsel should use this to his advantage.

In all, be it/they the prosecution or defence counsel, what is paramount is that, as ministers in the Temple of Justice, they must ensure that justice is served. For as stated by one of our own legal luminary that:

> The law exists as a guide for actions needed for the practice of law, not to be twisted and turned to serve whatever purpose, legitimate or otherwise which can only but result in embarrassing the profession if encouraged.

Both sides must of necessity protect the interest of justice by protecting the law; nothing is expected of them.

5. A Quick Look at Bail in Selected Jurisdictions

Crime is universal. It is neither racial nor ethnic bias; it is as ubiquitous as man. Crime which is an act or omission involving breach of a duty to which attaches sanctions is found and committed even in the sanest of climes. So, once there is someone or group

of persons who are suspected to have committed a crime or crime, they may be subject to bail if conditions allow.

5.1 The United Kingdom[34]

Here, section 4 Bail Act 1976 gives the defendant a *prima facie* right to bail (a presumption of bail) when charged with a criminal offence irrespective of how serious the offence is. This provisions is in line with Article 5 European Human Rights Act 1998 which guarantees an individual's right to liberty and security and therefore has clear relevance to bail decisions. However, section 115 Criminal Justice Act 2009 provides that a defendant who is charged with murder may not be granted bail except by a crown court-judge. A bail decision in a murder case must be made as soon as reasonably practicable, and in any event within 48 hours [excluding public holidays].

Bail may not be granted in the circumstances specified by the Criminal Justice Act unless the court is satisfied there is no significant risk of the accused committing an offence while on bail – whether subject to conditions or not. The CJA further provides that may not be granted to a suspect aged over 18 years who is already on the date of the offence unless there is no significant risk of the suspect committing an offence on bail. Section 15 CJA 2003 also states that bail may not be granted to a defendant over 18 years who it appears, having been released on bail in connection with the proceedings, has failed to surrender to custody unless the court is satisfied that there is no significant risk that if released on bail, the defendant would fail to surrender to custody.

The Bail Act generally lists the conditions (substantial grounds) for refusing a defendant bail. These conditions are in *pari materia* with those in Nigeria; these are:

- The nature and seriousness of the offence, and the probable method of dealing with it.

[34] There is basically little or no difference between the bail system in UK, Australia, and Canada. They are common wealth countries and thus share a lot in common in their Criminal Justice Systems.

- The defendant's character, record, associates and community ties.
- The defendant's bail records.
- The strength of the evidence against the defendant.
- If the court is satisfied that there are substantial grounds for believing that the defendant, if released on bail [whether subject to conditions or not], would commit an offence while on bail including the risk that the defendant may do so by engaging in conduct that would, or would likely cause physical or mental injury to any person other the defendant; and
- Any other relevant factor.

The bail conditions and consequences for jumping bail are on all fours as what is obtainable in Nigeria. The Bail Act require that the defendant be brought before a magistrate court within 24 hours of arrest, excluding Sundays.

The UK Bail Act creates the offence of absconding where the accused has been released on bail and fails, without reasonable excuse, to surrender to custody at the time and date specified in the bail. Thus, it is an offence for a defendant who has a reasonable excuse for failing [jumping] bail not to have surrendered as soon as was thereafter reasonably practicable. Where the defendant fails to surrender, the burden will be on him to prove that he had reasonable cause to surrender. Where the defendant is found guilty, absconding is punishable by up to 3 months' imprisonment and/or a maximum fine of *E*5000 in the magistrates' court. Where bail was imposed by the Crown Court, the offence of absconding is punishable by up to a maximum sentence of 12 months' imprisonment and/or unlimited fine. A Bail Act offence committed during the proceedings gives the court grounds for further refusing bail.

Where an accused fails to surrender or having surrendered disappears before the case is heard, the court must decide what to do. Where there is no explanation for the accused's failure to appear, the court is likely to issue a warrant for the accused's immediate arrest. If the case has been listed for trial, the accused may be tried in his

absence. Where however, some explanation is forthcoming, through the defence counsel, and the defendant has good, cogent and persuasive explanation to tender in court, the court is likely to grant bail in absentia or issue a warrant backed with bail.

The UK bail procedure admits of surety who must be a suitable person who will be required to attend court and give evidence on oath, confirming amongst other things, his financial resources, his character and any previous convictions, and his relationship and proximity to the defendant. The court in some instances also require bail bond from a defendant.

5.2 Ghana

Ghana shares some connections with Nigeria. Apart from being one of Nigeria's next-door neighbor, both countries have English as their official languages because they shared same colonial masters, and thus members of Common Wealth.

The 1992 Constitution of Ghana, which is the grundnorm, and the Criminal Procedure Code, 1960 [Act 30], grant every individual the right to bail, with or without conditions[35]. Article 14 (3) of the 1992 Constitution states that a person who is arrested, restricted or detained

a. for the purpose of bringing him before a court in execution of an order of a court in execution of an order of a court; or
b. upon reasonable suspicion of having committed or being about to commit a criminal offence under the laws of Ghana, and who is not released, shall be brought before court within 48 hours after arrest, restriction or detention.

Article 14 (4) further stipulates that where a person arrested, restricted or detained under paragraph (a) or (b) of Clause (3) of this article is not tried within a reasonable

[35] C. Mensah-Onumah, 'Bail System in Ghana' (14 May 2019), https://mobile.ghanaweb.com accessed 4 December 2020.

time, then without prejudice to any further proceedings that may be brought against him, he shall be released wither unconditionally or upon reasonable conditions, including in particular, conditions reasonably necessary to ensure that he appears at a later date for trial or proceedings preliminary to trial.

Section 15 (1) CPC, 1960 [Act 30] further provides that a suspect cannot be detained beyond a 48-hour period after his arrest, unless he is earlier brought before a court of competent jurisdiction.

Prior to the Ghana Supreme Court's decision in *Martin Kpebu v Attorney General*[36], not all offences were bailable in Ghana. Felonious crimes like rape, defilement, robbery, murder, kidnapping, treason, etc., were not bailable. However, the Supreme Court's ruling has made all offences bailable, subject of course to bail conditions.

In Ghana, if it is established that a suspect has not committed a crime as alleged, either at the end of investigation or upon the expiration of 48 hours, the defendant is released unconditionally. But if it established that the suspect has or may have committed an offence, the police may either process the suspect to court or release him on police bail pending further investigations. In court, the suspect may apply to secure a court bail.

As in all Common Wealth climes, Ghana has provision for surety who is willing to stand in for the accused[37]. Once the suspect is able to get a surety, the bail is granted after undertaking a bond. The bond comes in the form of conditions like making the suspect appear at the court or police station at a specified date, time and place with an amount also stated in.

[36] [2015] JELR 68939 (SC).

[37] It is reported that it is becoming increasingly difficult to find people who will stand in as sureties in Ghana because of distrust.

Where a suspect jumps bail, the surety is called upon to hand over the suspect or pay the penalty stated in the bond. This penalty is what is referred to as forfeiture. In Ghana, there are no bail schedules, the amount and conditions are treated on case by case basis[38]. The law only stipulates that bail conditions[39] and amount should however not be excessive or harsh.

Even though bail is every individual's right and all offences bailable in Ghana, a court can still refuse to grant bail within the Ghananian law if where the court is convinced that

- the defendant will commit further offence while on bail,
- the defendant may abscond,
- the defendant will interfere with the course of justice while on bail,
- the defendant is a serial offender, etc.

The bail considerations and consequences of jumping bail or breaking any of the bail conditions are same as in Nigeria, UK, Australia, and Canada.

6. Conclusion

The topic 'bail' is an interesting one; be it bail pending trial or bail pending appeal. Bail, as stated earlier, is a conditional release of a defendant who is alleged to have or has actually committed an offence. The defendant looks to the law for justice by asking for bail [to be granted freedom], the State looks to the law for justice [to be rid of criminals by detaining them or restraining their movements], and the complainant equally looks to the law for justice [to be avenged]. So bail is neither an issue to be trifled with, nor is it to be abused. It is for this reason that "every court must be ready to prevent the improper use of its machinery from being used as a means of vexation and oppression in the process of litigation"[40].

[38] Criminal Procedure Code, section 96 (3).
[39] Bail conditions in Ghana are as they are in Nigeria.
[40] Min of Works v Tomas (Nig.) Ltd [2002] 2 NWLR (Pt. 752) 785 per Musdapher JCA.

From the foregoing, the bail system practice in Nigeria is in tandem with the rest of the world; it is utilitarian, meaning that it is in line with international best practices. The law regarding bail in Nigeria is coherent and lively. True, Nigeria borrowed most of its criminal justice system from the English Criminal justice, yet this type of legal transplantation is not alien to most legal systems. Our bail system, suretiship and forfeiture of recognisance draws much of its "strength from being part of a common law having its roots in the past while remaining organic"[41].

However, we do not by this write-up claim that the law and practice relating to bail, bondspersons and forfeiture of recognisance in Nigeria is perfect, but the law and practice are coherent enough to promote just and equity for the parties concerned – the State, the applicant (accused/suspect), and the complainant. Whatever lacuna is found in law and practice are those created by the frailties and imperfections of humanity as a whole. For one of legal luminaries of blessed memory, Oputa JSC, said that:

> Adjudication in our courts is a human attempt, (however imperfect), circumscribed as it is by our human limitations, to do justice between the parties before the court[42].

[41] Fidelity Corporation v NNPC [2002] 34 WRN II.
[42] Olufosoye & Ors v Olorunfemi [1989] 1 NSCC 29, cited by Femi Daniel, Witty Sayings & Quotes of Nigerian Judges [Lagos: Inkspire Ventures Limited, 2012] p.167.