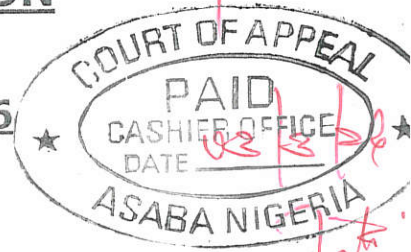


**IN THE COURT OF APPEAL OF NIGERIA**  
**IN THE ASABA JUDICIAL DIVISION**  
**HOLDEN AT ASABA**

**THIS 11<sup>TH</sup> DAY OF FEBRUARY, 2026**

**BEFORE THEIR LORDSHIPS:**



**HON. JUSTICE JAMES GAMBO ABUNDAGA**  
**HON. JUSTICE ASMA'U M. MAINOMA**  
**HON. JUSTICE OLUKAYODE A. ADENIYI**

**JUSTICE, COURT OF APPEAL**  
**JUSTICE, COURT OF APPEAL**  
**JUSTICE, COURT OF APPEAL**

**APPEAL NO: CA/AS/20C/2025**

**BETWEEN:**

**PETER MARIO EFENYUMI - - - - -APPELLANT**

**AND**

**INSPECTOR GENERAL OF POLICE - - -RESPONDENT**

**JUDGMENT**

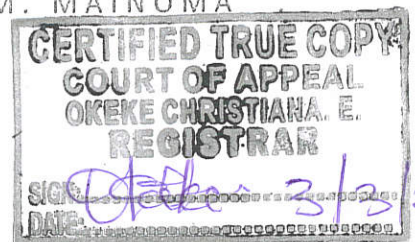
**(DELIVERED BY A.M.MAINOMA, JCA)**

This is an interlocutory appeal against the Ruling of the Federal High Court, Warri, Division (the Lower Court) delivered on the 26th day of November, 2024 in SUIT No: FHC/WR/115C/2022.

The Notice of appeal was filed on the 05th day of December, 2024 (found at pages 72-74 of the record of appeal).

In summary, the Appellant was arraigned, along with 6 other co-defendants, on a 32 Count charged before the Lower Court which was subsequently amended to 4 counts charge. From the Record before this Court, the Appellant had previously been arraigned and

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granted bail on 2 occasions by different Judges who were eventually elevated to the Court of appeal. That the Appellant had perfected the bail conditions imposed. That upon a fresh arraignment before the instant Lower Court Judge, the bail condition was varied, requiring the Appellant to deposit the sum of N50million at the Registry of the lower court. The Appellant claims that the Lower Court acted in error and without justification by imposing this new condition and that it amounted to improper exercise of the discretion of the Judge and affected the constitutional right of the Appellant to presumption of innocence.

This is the core of the argument proffered by the Appellant's counsel in the Appellant's Brief of argument, wherein he raised 3 issues for determination as follows:

- 1. "Whether the learned trial Judge did not improperly exercise his discretion or abuse same when he made the bail of the appellant conditional upon appellant's payment of N50million Naira as deposit at the registry of the Lower Court;*
- 2. Whether the order of the Court mandating the appellant to pay or deposit part of the allegedly stolen money in the sum of N50 Million with the registry of the lower court as a condition to enjoyment of bail already granted does not amount to a presumption of guilt of the appellant until the contrary is proved contrary to the constitutional presumption of innocence;*

3. *Whether the order of the lower court mandating the appellant to pay or deposit part of the allegedly stolen money in the sum of N50million with the registry of the lower court as a condition to enjoyment of bail already granted (when he has not been found guilty) was reasonable in the circumstances of this case."*

Arguments of the learned Counsel to the Appellant, on these issues are as follows:

- That this Court can interfere with the exercise of discretion of the lower Court where same is found to have been guided by improper motive or arbitrariness: citing ***NZEKWE V ANEKWENEGBU (2019) LPELR-49002 (SC) PP.22-23 para B; INEC V ADVANCED CONGRESS OF DEMOCRATS (ACD) & ORS (2022) LPELR-61068 (SC) PP.44-45 para F.***
- That the Lower Court Judge having found that the Appellant had perfected his previous bail conditions, imposing a new condition based upon the factor that the victim of the offence 'lost a huge sum of money' when evidence had not been led at that stage, was a wrong exercise of discretion; relied on ***NNAMDI V FRN (2022) LPELR-57432 (PP. 14-16) Para E.***
- That the Lower Court's reliance on Section 165(2) ACJA 2015 to justify his order cannot override the provisions of Section 36 of the 1999 Constitution of the Federal Republic of Nigeria (as amended).

- That this Court should interfere in restoring the Constitutional right of the Appellant.
- On issues 2, and 3, learned counsel to the Appellant submits that the appellant is presumed innocent until the contrary is proved, and so, he is entitled to be granted bail on liberal terms, citing Section 36(5) of the Constitution, and Section 165(1) of the Administration of Criminal Justice Act,(ACJA) 2015. Counsel urged that this appeal be allowed and the decision of the Lower Court be set aside.

Respondent's Brief of argument: settled by *ONORIODE WILLIAM EWENODE, Esq.* raised the following issues:

1. *"Whether in the absence of the leave of this court, having not been sought, there is a proper appeal upon which this application can be predicated;*
2. *Whether in the light of the clear provisioned of Section 165 of the Administration of Criminal Justice Act, 2015 (ACJA), the lower court was not right to have made the order;*
3. *Whether this same Appellant who has jumped bail can validly enjoy the discretion of this honorable court."*

Learned Counsel to the Respondent argued as follows:

- That this appeal, being an interlocutory appeal, in the absence of leave granted, as required by Section 14 of the Court of Appeal Act, 2004, cannot be validly determined, thus should be struck out.

- That the Lower Court rightly exercised its discretion under Section 165 of the ACJA, 2004;
- That by Section 165(2) the Lower Court had the discretion to require the deposit of money as security for the bail before the bail is approved.
- That the Appellant, having previously jumped bail, cannot enjoy the favourable discretion of the court.
- That the argument on conflict between Section 165(1) ACJA and the Constitution as well as the argument on the said Section 165 relating to a fresh bail, were not distilled from the Grounds of appeal and so, should be struck out in the absence of leave granted to argue fresh issues.
- Counsel urged that this appeal be dismissed for the above argued reasons.

Appellant's Reply brief is raising a fresh issue and also re-arguing an already argued issue in the Appellant's brief, thus I hereby discountenance the Reply brief.

Let me start with the Preliminary issue raised by the learned counsel to the Respondent, which is premised on the ground that, being an interlocutory appeal, leave was not sought to file same and he urged that this appeal be struck out. The objection is argued as issue 1 in the Respondent's Brief (see pages 2 – 4 of the Record of Appeal). In arguing the objection, learned Counsel to the Respondent relied on Sections 14 and 24(1) of the Court of Appeal Act, 2004 and ***YA'U V SHARADA & ORS (2023) LPELR-60797***

***(CA)Pp.11-12 para C; ADELAKUN V AKINBAYO & ORS (2015) LPELR-24743 (CA)Pp.8-9, para C.*** He urged that the absence of leave has deprived this Court of jurisdiction to entertain the appeal, citing in support of this submission, the case of ***UKPONG V COMMISSIONER OF FINANCE AND ECONOMIC DEVELOPMENT (2006) 19 NWLR (PT 1013) 187 (SC).***

In response, learned Counsel to the Appellant submits that the objection raised by the Respondent's Counsel is itself, incompetent, same not having been argued in the Brief of the Respondent as required by ORDER 10 RULE 1 of the Rules of this Court, 2021.

#### ***Resolution of the P.Os***

Starting with the submission of the Appellant's Counsel, that on the failure of the Respondent's counsel to argue the Preliminary Objection in the Respondent's Brief of argument, Learned counsel to the Appellant rightly relied on the provision of ORDER 10 RULE 1 of the Rules of this Court, 2021, which provides that:

*"....preliminary objection shall be argued in the respondent's brief of argument."*

So, while a formal notice of intention to rely on a Preliminary Objection may be separately filed, stating the grounds for the objection, the arguments on the objection must be incorporated in the Respondent's Brief of Argument. Thus, except for fundamental jurisdictional issues, failure of the Respondent to comply with this

provision of the Rules of this Court, renders the objection incompetent, and same is hereby struck out.

*The substantive appeal:*

The issues raised in the Appellant's Brief of argument are based upon the allegation of abuse of discretion by the lower court Judge, violation of the constitutional presumption of innocence and reasonableness of the condition for bail imposed on the Appellant. These issues can be blended into one as follows:

***"Whether the learned lower court judge improperly exercised his discretion by imposing a bail condition requiring the deposit of the sum of N50,000,000.00 (Fifty million Naira), and whether this does not amount to presumption of guilt, contrary to Section 36(5) of the constitution"***

It is argued by the learned Appellant's counsel that the condition imposed on the Appellant to deposit the sum of N50M at the registry of the court as condition for granting bail, is too stringent and amounted to refusal to grant bail in a bailable offence. Also, that bearing in mind that the Appellant had perfected the bail earlier granted by 2 Judges.

The contrary contention is that grant or refusal to grant bail is a discretionary matter which the lower court rightly exercised in line with the law, relying on Section 165 of ACJA, 2015.

It is trite that the grant or refusal to grant bail is a matter of discretion. Also, each case is decided upon its unique circumstances. There is no binding precedent in matters of bail and so, a court cannot be compelled by a previous decision when exercising its discretion to grant or refuse bail, as doing so would defeat the very purpose of having discretionary power. The only condition is that the discretion must be exercised judicially and judiciously, i.e based on what is fair under the circumstances and guided by the rules and principles of law. thus, except where there is a special circumstance for denying bail, a defendant is entitled to bail: **SEE: ANI V STATE (2002) 1 NWLR (PT 747) 217; EYU V STATE (1988) 2 NWLR (PT 78) 602.**

The criteria regarding whether to grant or refuse bail pending trial is well settled. These criteria have been enunciated in a plethora of judicial decisions from the Apex Court and this Court; **SEE: ASARI DOKUBO V FRN NSCC VOL.4 (2009) 158; BAMAIYI V STATE ( 2001) 8 NWLR (PT 715) 210; ABACHA V STATE(2001) 6 NWLR (pt 78)602.**

Now, it is evident from the ruling appealed against, that the lower court is not averse to granting bail to the Appellant, the problem has to do with the condition imposed on the Appellant to be satisfied before enjoying the bail.

In its Ruling, the lower court, Coram: Hon. Justice A. NGANJIWA stated as follows:

*"The defendant were earlier granted bail and have been coming. The victim of the alleged offence charged parted away with over N500,000,000.00 (Five Hundred Million Naira). Section 165(2) of the Administration of Criminal Justice Act (ACJA) 2015 in the circumstances urged to court to invoke the provision in addition to the terms and conditions imposed for the Defendants, they be made to deposit or their sureties part as security. In view of the foregoing, the bail conditions are hereby varied to include the Defendants deposit to the Deputy Chief Registrar each the sum of N50,000,000.00. They are given 30 days from today to comply..." (see pages 39-48). The case is adjourned to the 7th of February, 2025 for trial'. See pages 49-50 of the record of appeal)*

The most important consideration a court makes in deciding whether or not to grant bail and the terms for such grant are whether the defendant will eventually not escape justice and if he will turn up for his trial. Learned counsel to the appellant opined that what weighed more on the mind of the judge is the sum of money which the victim lost, that is N500million. Irrespective of that, Judges have wide discretion in setting bail terms but the critical question is whether the discretion is exercised judiciously and judicially by considering an applicant's financial means to avoid punitive detention: thus the demand for the sum of N50m from an average person contravenes the spirit of Section 36(5) of the 1999

Constitution as this effectively punishes the Appellant before conviction, if at all, and makes his liberty contingent upon wealth and not legal criteria. The lack of judicious and judicial exercise of discretion occurs not from the requirement of cash deposit, but from setting the amount at such a level that it seems the purpose of bail is defeated and presumption of innocence, meaningless.

I am therefore in agreement with the submission that this varied bail condition amounts to presuming the appellant guilty even before the trial, and it does not amount to a judicial exercise of discretion, especially in the modern times where the society is almost moving to a cashless one.

Where a court did not exercise its discretion judicially and judiciously, its decision can be interfered with on appeal: SEE: ***MENAKAYA MENAKAYA (2001) 16 NWLR (PT 738) 203 SC;*** ***UDOEBERE V STATE (2001) 12 NWLR (PT 725) 617, SC.***

I resolve the issue in favor of the Appellant.

Consequently, the Ruling of the lower court is hereby set aside. The Appellant is granted bail upon the earlier conditions imposed before the variation as follows:

The Appellant is granted bail in the sum of N60 million with one surety in like sum who must be the owner of a landed property in either Warri or Asaba, in Delta State with a Statutory Certificate of Occupancy to be verified by the Principal Registrar II of the Lower Court in Warri Division, at the Lands Registry, as to the genuineness

or otherwise of the title documents. The Prosecution, through the Investigating Police Officer, shall ascertain the residence of the Surety and indicate whether he/she is the owner of the property pledged as security for the bail of the Appellant. The Appellant to remain in correctional Centre pending when he perfects these conditions for bail.



**ASMA'U M. MAINOMA**  
**JUSTICE, COURT OF APPEAL**

TheNigerianLawyer

CERTIFIED TRUE  
COURT OF APPEAL  
OKEKE CHRISTIANALE  
REGISTRAR  
SIGN: Okeke 2/2/2026  
DATE

**CERTIFIED TRUE COPY**

**APPEARANCES:**

*Appellant's Counsel: L. O. EGBOYI;*

*Respondent's Counsel: ONORIODE WILLIAM EWENODE.*

TheNigerianLawyer


**APP NO. CA/AS/20<sup>c</sup>/2025**  
**JAMES GAMBO ABUNDAGA, JCA**

I have read the judgment delivered by my learned brother **ASMA'U MUSA MAINOMA JCA.**

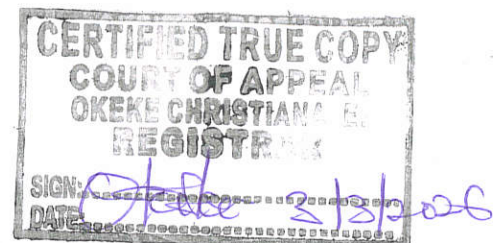
The decision of his lordship allowing the appeal and setting new conditions for bail of the Appellant clearly serves the better interest of justice.

The variation of the order of his predecessors who had been elevated to this court, whereby the appellants were directed to deposit N25m to secure their bail is presumptive of guilt and punitive. It amounts to giving with one hand and taking away with another. The appellant stands charged with bailable offences and should not be denied bail under the guise of deposit of humongous amount of money. The lower court's discretionary power in matter of bail, in my view was not judiciously and judicially exercised and cannot be allowed to stand.

I allow the appeal and abide the conditions for bail set out in the leading judgment.



**JAMES GAMBO ABUNDAGA,**  
**JUSTICE, COURT OF APPEAL**



APPEAL NO. CA/AS/20<sup>c</sup>/2025

CONTRIBUTION: OLUKAYODE ADEGBOLA ADENIYI, JCA.

1. I have had the privilege of reading in draft the lead judgment just delivered by my learned Brother, **Asma'u Musa Mainoma, JCA**, in the instant appeal.
2. It is settled beyond controversy that the grant of bail, including the terms upon which bail is granted, is a matter within the discretion of the court. Such discretion, however, is not at large. It must be exercised judicially and judiciously, in accordance with established legal principles and in a manner that is fair, rational, and consistent with the Constitution.
3. It is equally well settled that bail is not granted as a reward, nor is it refused as punishment. Bail is a mechanism designed to secure the attendance of an accused defendant at trial while preserving his constitutional liberty pending determination of guilt or innocence. The primary purpose is therefore not to impose hardship, but to ensure that the accused will not evade justice.
4. See Chukwuebuka v FRN (2014) LPELR-22525(CA), per **Augie, JCA** (as he then was), as follows:

*"It is trite law that the main function of bail is to ensure the presence of the accused at the trial - see Suleman V. COP, Plateau State (2008) 8 NWLR (Pt. 1089) 298, where Tobi, JSC, held that this criterion "is the cynosure of all the criteria. It is the center-piece. And is regarded as not only the omnibus ground for granting or refusing, but the most important." See also Barnaiyi V. The State (2001) 8 NWLR (Pt. 715) 270 SC, wherein Uwaifo, JSC, also observed that "it is a proper and useful test whether bail should be granted or refused to consider the probability that the accused will appear in Court to take his trial."*

5. In the instant case, the learned trial Judge did not refuse bail outright. Rather, he varied the earlier bail conditions and imposed an additional requirement that the Appellant deposit the sum of **₦50,000,000.00** at the Registry of the Court pursuant to the provision of s. 165(2) of the **Administration of Criminal Justice Act, 2015**.
6. The trial Court linked the deposit condition to the alleged financial loss of the complainant. With respect, that approach revealed a misconception of the governing philosophy of bail.

7. While the seriousness of the offence and the nature of the charge are relevant considerations, the bail process is not intended to mirror restitution, compensation, or punishment. The alleged loss of ₦500,000,000.00, though significant, remains an allegation until proved. It cannot become the pivot upon which the accused defendant's liberty is suspended.
8. More importantly, the discretion to impose bail terms must always be exercised with due regard to the provision of s. 36(5) of the Constitution, which guarantees the presumption of innocence.
9. In my view, a bail condition that effectively requires a defendant to procure and deposit cash, without evidence that he possesses such means, creates a practical situation where bail exists in theory but is impossible in reality. This is precisely the mischief the Constitution intends to prevent. A bail term that is so onerous that it cannot reasonably be fulfilled by the accused becomes indistinguishable from a refusal of bail.
10. The law does not prohibit cash deposits as a condition for bail. However, the discretion to impose such deposits must be guided by reasonableness, proportionality, and fairness. Bail conditions must not be punitive, oppressive, excessive, or unrealistic. Such conditions offend the spirit of bail

jurisprudence and erode public confidence in the administration of criminal justice.

11. Where a court fails to exercise its discretion judicially and judiciously, an appellate court is entitled to intervene. See Eye v FRN (2018) LPELR-43599(SC), where it was held, per Bage, JSC, as follows:

*"It is well settled that if judicial discretion has been exercised bonafide uninfluenced by irrelevant considerations and not arbitrarily or illegally by the lower Court, an appeal Court will not ordinarily interfere. But there are exceptions whereby this Court is entitled to impeach the exercise of judicial discretion by the lower Court. Thus, an appellant Court may interfere with exercise of judicial discretion if it shown that there has been a wrongful exercise of the discretion such as where the trial Court acted under misconception of law or under misapprehension of fact in that it either gave weight to irrelevant or unproved matters or it omitted to take into account matters that are relevant or where it exercised or failed to exercise the discretion on wrong or inadequate materials*

and in all other cases, where it is in the interest of justice to interfere. See *ENEKEBE VS ENEKEBE* (1964) 1 All NLR 102 at 106, *DEMUREN VS ASUNI* (1967) 1 All NLR 94 at 101, *MOBIL OIL VS FEDERAL BOARD OF INLAND REVENUE* (1977) 3 SC 97 at 141, *SOLANKE VS AJIBOLA* (1968) 1 All NLR 46 at 52."

12. In the circumstances of this appeal, I am satisfied that the varied bail condition imposed by the learned trial Judge was excessive and had the effect of punishing the Appellant before trial. It also undermined the constitutional presumption of innocence guaranteed by s. 36(5) of the Constitution.
13. Accordingly, I fully endorse the conclusion reached in the lead Judgment that the bail variation should be set aside, and that the Appellant should be admitted to bail on the earlier terms, as restated in the lead Judgment.
14. It is for these additional reasons, and the fuller reasons contained in the lead Judgment, that I also allow the appeal.

  
**OLUKAYODE ADEGBOLA ADENIYI**  
**JUSTICE, COURT OF APPEAL**

