

IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION HOLDEN AT ABUJA F.C.T.
ON THE 26TH DAY OF MAY, 2016
DELIVERED BY HON. JUSTICE M.E ANENIH (PRESIDING JUDGE)
AND HON.JUSTICE JUDE OKEKE (HON. JUDGE)

APPEAL NO.CVA/60/15.
MOTION NO:M/2087/16.

BETWEEN:

FIRST GENERATION HOMES SAVINGS & LOANS LTD.....APPELLANT

AND

GLADYS OBEHI OMONAGBE.....RESPONDENT

RULING

Before the court is a motion on notice filed on 20th January 2016 and brought pursuant to Order 43 Rule 7 of the High Court of Federal Capital Territory Abuja Civil Procedure Rules 2004 and under the Inherent Jurisdiction of this Honourable Court.

The applicant prays for:

1. An order of this Honourable Court dismissing the Notice of appeal with Appeal No. : CVA/60/15 dated 25/06/14 and filed the same day in suit No. CV/27/2014 for want of diligent prosecution.
2. And for such order or other orders as this Honourable Court may deem fit to make in the Circumstances.

The grounds upon which the application is brought are:

1. That the applicant has failed, neglected or refused to prosecute this appeal since 25 June 2015 and has thereby put judicial process in abeyance.
2. That the Applicant has refused, neglected or failed to comply with the rules of the Honourable Court.

In support of the application is a 5 point Affidavit deposed to by Gladys Obehi Omonagbe and an accompanying written address.

The respondent reacted to the motion on notice by filling an 8 point counter Affidavit deposed to by Desmond Ojegbele with attached Exhibits A and B and an accompanying written address.

Both counsel made oral submissions before the court while adopting their respective written addresses on behalf of the parties.

The applicant's counsel urged this court to grant its application and dismiss the Notice of Appeal while the respondent's counsel urge the court to refuse this application and allow the respondent to compile and transmit the records of Appeal.

We have considered the application for dismissal of the notice of appeal before the court, the supporting affidavit, the written address, counter affidavit with attached exhibits, accompanying written address and the oral submissions of counsel. And we are of the view that the issue arising for determination here is:

Whether the application for dismissal of the notice of appeal ought to be granted as prayed.

The applicant averred that the notice of appeal was filed 25th June, 2015 while the judgement was delivered on the 2nd of June, 2015. That after filling the notice of appeal, the appellant/respondent has done nothing further in respect of the appeal. And that the appellant/respondent is employing delay tactics aimed at substantially delaying the enforcement of the lower court's judgement, thereby depriving the respondent/applicant of the fruits of her success in the suit before the lower court.

The respondent/appellant on the other hand narrated in the counter affidavit how he has made efforts to get the compiled records transmitted, all to no avail through no fault of his. And to further drive home his excuse he attached two letters he had written in respect of the compilation of the records of proceedings.

It is clear from the provisions of Order 43 Rule 3 & 4 of the High Court of the Federal Capital Territory High Court (Civil Procedure Rules) that the time allowed for compilation and transmission is 90 and 7 days respectively, which has since expired. However we are persuaded from the averments in the counter affidavit, particularly paragraphs 4,5 & 6 that the appellant ought to be availed with further time to compile and transmit the record of proceedings in the overall interest of justice. This is because it is well settled principle of the law that justice must not just be done but it must be manifestly and undoubtedly seen to be done. Credence was given to this Principle in:

F.R.N. v.AKUBUEZE (2010) 17 NWLR (Pt. 1223) 525 S.C or LPELR-1272(SC) Pg 13 Para B- E where the Supreme Court held that:

"Fair hearing incorporates a trial done in accordance with the rules of natural justice which in the broad sense, is that which is done in circumstances which are fair, just, equitable and impartial. This aspect of natural justice should not only be done but should manifestly and undoubtedly be seen to be done. Fair hearing must include giving to a party or a legal practitioner of his choice the opportunity to present his case before an impartial court or other Tribunal in an atmosphere free from fear and intimidation. It cannot be over-emphasised that in our adversary system of administration of justice, the freedom of counsel to put across his client's case without fear or favour is a most important ingredient." Per FABIYI, J.S.C. (P. 13, paras. B-E).

The same Order 43 Rule 7 relied on by respondent/applicant's counsel for dismissal of the Notice of Appeal and Order 43 Rule 11 of the rules of court empowers the court respectively to enlarge time for sufficient reason shown and/or direct a departure from the Rules upon application of a party.

Also under the prevailing circumstance the respondent has enumerated the reasons for its omission and canvassed for more

time to compile and transmit the records. We believe it will only be in the interest of fair hearing within reasonable time to allow the respondent/appellant some time to do the needful. This would be in line with the tenants of the principle of fair hearing enshrined in Section 36 of the 1999 Constitution as Amended. See on this Principle:

VICTINO FIXED ODDS LTD V. OJO (2010) 8 NWLR (Pt. 1197) 486 or LPELR-3462(SC) Pg. 13-14 Para A-G where the Supreme court held that:

"Let met say it right away that the right to fair hearing is a cardinal principle that is provided in section 36(1) of the 1999 Constitution of the Federal Republic of Nigeria. It provides as follows:-

"36 (1) In the determination of the civil rights and obligations including any question or determination by or against any government or authority, a person shall entitled to a fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such manner as to secure its independence and impartiality."

It is certain that fair hearing by a court or other judicial tribunal under section 36(1) of the 1999 Constitution - the grundnorm, incorporates the audi alteram partem rule. It is that a man can never have a verdict entered against him on a matter relating to his civil rights or obligation before such a court or tribunal without being given an opportunity of being heard. The rule is one of the essential cornerstones or our judicial process. See: Amadi v. Thomas Aplin Co. Ltd. (1972) SC 228; Kano N. A. v. Obiora (1959) SCNLR 577.

In its real essence, fair hearing lies in the procedure followed in the determination of the case, not in the correctness of the decision. It is only when the party aggrieved has been heard that the trial judge would be seen as discharging the duty of an unbiased umpire. Learned counsel for the appellant feels that his surmised absence of miscarriage of justice ameliorates an infringement of a provision of fundamental human right." Per J.A. FABIYI, J.S.C. (Pp. 13-14, paras. A-G)"

See also

AGBITI V. NIGERIAN NAVY (2011) 4 NWLR 175 or LPELR-2244 SC Pg. 44-45 Para E-F where his lordship Adekeye JSC reiterated as follows:

"Generally speaking, the term fair hearing connotes the impression given to an ordinary reasonable person watching the proceedings. If he goes with the impression that a person has not been treated fairly then there is a breach of fair hearing. In the Nigerian legal system, fair hearing is not only a common law right but a constitutional right. By virtue of Section 36 (1) of the 1999 Constitution, the purport is that in the determination of his civil rights and obligations, a person is entitled to a fair hearing within a reasonable time by a court or other tribunal established by law..."

In the light of the foregoing this application for dismissal would not be granted at this juncture, and it is therefore refused. While in accordance with Order 46 Rule 1 of High Court of Federal Capital Abuja Civil Procedure Rules 2004, the respondent/appellant is hereby ordered to get the compiled record of proceedings transmitted within the next 30 days.

Signed:

HON JUSTICE M.E. ANENIH

(Presiding Judge)

Signed:

HON JUSTICE JUDE OKEKE

(Hon. Judge)

Appearances.

Egbo Ezekiel Esq. for Appellant/Respondent.

Celina Ede Mrs for Respondent/Appellant.