

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT WUSE ZONE 2
ON TUESDAY THE 30TH DAY OF OCTOBER, 2018

BEFORE THEIR LORDSHIPS:

HON. JUSTICE A. S ADEPOJU	-	PRESIDING
HON. JUSTICE Y. HALILU	-	MEMBER

CASE NO: AMAC/EPRO25/2017
APPEAL NO: CUA/139/18
MOTION NO: M/45/18
BETWEEN:

ABUJA ENVIRONMENTAL PROTECTION BOARD (AEPB)	}	APPELLANT
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AND

1. ABUJA MUNICIPAL AREA COUNCIL	}	RESPONDENTS
2. THE REGISTERED TRUSTEE OF MOUNTAIN OF FIRE AND MIRACLE MINISTRIES		

RULING

The Appellant vide a Motion on Notice approached this Hon. Court for the following relief;

1. An Order of this Honourable Court for extension of time within which the Applicant shall seek or apply for leave of the Court to Appeal against the whole ruling of his Worship **Chukwuemeka T. Ubani** of Court 3, Magistrate Court of the Federal Capital Territory, Abuja sitting at Zone 6, Wuse Abuja delivered on the 4th day of August 2017 between Abuja Municipal Area Council (AMAC) VS The Registered Trustee of Mountain of Fire and Miracles Ministries & Anor in case **No. AMAC/EPRO25/2017**
2. An Order granting leave to the Applicant to appeal against the said Ruling of his **Worship Chukwuemeka T. Ubani** of court 3, Magistrate Court of the Federal Capital Territory, Abuja sitting at zone 6, Wuse, Abuja of the 4th day of August 2017.
3. An Order of this Hon. Court for leave to file and argue the grounds of mixed law and facts and to raise

fresh issues as may be contained in the four grounds of Appeal as they were not canvassed in the Lower Court in the course of trial.

4. An Order of this Hon. Court deeming the notice and grounds of Appeal herein exhibited as properly filed and served subject to the payment of the requisite court fees thereon.
5. An for such other Order(s) as this Honourable Court may deem fit to make in the circumstances.

The ground upon which the reliefs are sought were stated. Also affidavit of 12 Paragraph was deposed to by one **Abdulganiyu Abdulwasiu Ayinde** an Administrative Clerk with the Legal Unit of the Appellant was filed.

In the affidavit before the court, the Appellant stated that the Lower Court delivered Ruling sought to be appealed on the 4th day of August, 2017 vide exhibit “A”.

That the Appellant filed notice of Appeal dated 8th November, 2017 and the court granted leave for notice of Appeal to be filed out of time. And that the Appellant sought by an oral application to be joined in the appeal the Registered Trustees of Mountain of Fire and Miracle Ministries, which the court graciously allowed.

That the Appellant however, inadvertently failed to apply to the Appellate court to amend the notice of appeal with **Appeal No. CVA/54/2018** to reflect the amendment as to the parties. And court struck out the appeal on the 16th May, 2018.

That the failure to amend the notice of appeal with **Appeal No. CVA/54/2018** was not deliberate, but inadvertence of counsel.

That the notice of appeal contained substantial, recondite and arguable grounds of appeal and that it will be in the interest of Justice to grant the application.

A written address was equally filed in compliance with law and order wherein learned counsel argued and urge the court to grant the application.

Learned counsel for the 1st Respondent though not opposing the application but stated that there is no ground to support the application with result to paragraph 3 and therefore he urge the court to refuse relief three.

On the part of court, we have considered the application of the applicant and the reasons stated in the affidavit in support therein, we must observe that order 50 Rules 7 of the Rules of this Hon. Court provides as thus;

Order 50 (7)

“Where the time available to the appellant for the taking of any step has expired before such step has been taken as completed , the Respondent may on notice to the appellant apply to the court to strike

out the appeal , and the court may strike out, or enlarge the time for sufficient reason shown.”

Acted on the above order the appeal was struck out hence this application. This court is empowered by law to enlarge time for the doing of any act in a given case in order to avoid injustice been meted to the parties before them. ***OLORO VS EKITI STATE GOVT. (2007) ALL FWLR (Pt. 387) 958 at 973 Paragraph 9.***

From the affidavit in support of the motion, it was stated that it was the fault of the learned counsel for the Appellant having not done the obvious leading to the striking out of the appeal. We shall therefore not allow sin or mistake of counsel to be visited on the litigant.

This appeal is hereby allowed.. application is granted.

Justice A.S Adepoju
(Hon. Judge)
(Presiding)

Justice Y. Halilu
(Hon. Judge)
(Member)