

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION (APPELLATE DIVISION)
HOLDEN AT COURT NO. 7, MAITAMA-ABUJA
ON THE 28TH DAY OF JUNE, 2019
BEFORE THEIR LORDSHIPS: HON. JUSTICE M. E ANENIH (PRESIDING JUDGE)
HON. JUSTICE B. HASSAN (HON. JUDGE)
APPEAL NO: CA/329/2018
SUIT NO. CV/21/1017
BETWEEN:**

CHINEX GLOBAL RESOURCES LTD.....APPELLANT

AND

COLVI LIMITED.....RESPONDENT

RULING

(Lead ruling delivered by Hon. Justice B. Hassan)

The appellant herein filed this application with NO. M/142/2018 brought pursuant to Oder 50 Rules 6 & 30 of the rules of this Court 2018, and under its inherent jurisdiction praying for the following:

- 1) An order of extension of time within which the appellant/applicant to seek leave to appeal against the judgment delivered on the 20th July, 2018 by Mabel T. Segun Bello (Mrs), for the time to file having been relapsed;
- 2) An order for leave to appeal;
- 3) And order for extention of time within which to appeal;
- 4) An order of the Honourable Court deeming Notice of Appeal already filed and served as properly filed and served;
- 5) And for such further order or orders as the Honourable Court may deem fit to make at the circumstances of the application.

The application is supported by ten paragraphed affidavit, deposed to by Kingsley Okwara, the Litigation Assistant in the Law Firm of Okadigbo & Co, and in which he relied on all the paragraphs as are contained therein.

In compliance with the rules of this Court, the counsel to the appellant/applicant proffered and filed a written address in support of the application, and which he adopted as his oral argument.

In the affidavit in support of the application more particularly paragraph 4 is to the effect that this application became necessary because the stipulated 30 days within which to file this appeal has elapsed, and that by paragraph 5, it is stated that there was a delay in getting the CTC of the judgment of the Court for the applicant for same and the Registrar could not release same rules it was first cross-checked as signed by the trial District Court Judge, coupled with the fact that the record book was always unavailable because of frequent similar application from counsel.

In paragraph 6 it is deposed to the fact that after the delivery of the judgment, the Trial District Court Judge's annual leave fell due and accordingly the Court proceeded on the leave, and by paragraph 7 it is stated that the delay in filing this process is neither out of the applicant's making nor out of the disregard to the Honorable Court, but majorly due to delay in getting the CTC of the judgment of the Court.

In his written address the counsel to the applicant/applicant formulated lone issue for this Court to determine, to wit:

Whether this Honourable Court has the power to grant the application in question?

The counsel cited Order 50 Rule 6 of the rules of this court to the effect that the time prescribed in Rule 1 of this Order, may be enlarged at any time by the Court on such terms as it may deem fit after notice is given to the Respondent by the Applicant in his application for enlargement of time, and to him, the operative phrase is "at any time". He went further to cite Order 50 Rule 30 to the effect that a Court may if it thinks fit, enlarge any period of time prescribed by this Order, and to him, this is to remove any doubt in the mind of any one that the Court has the unfettered power to grant this application

The counsel in his argument further cited section 36 of the 1999 constitution as amended and he submitted that this Court has not only the powers, but also the discretion to grant this application, and he cited the case of **UBA Plc V. Mode Nigerian Ltd (2001) 1 NWLR (pt 693) 141 at 148**

paras D-E to the effect that the discretion has to be exercised judicially and judiciously by balancing the interest of the parties.

The counsel then submitted that since there is a substantial ground of appeal, the Court may grant the application, as cited the case of **Ngere & Ano. V. Okuruket XIV & Ors (2014 NJSC (pt 11) p. 129 para. C-P**, and he urged the Court to so hold.

The counsel to the respondent filed an eight paragraphed affidavit in opposition to the application.

That by paragraph 4, it is stated that the judgment Debtor/Applicant filed a motion to set aside the judgment of the Court delivered on the 28th of July, 2018 with motion NO.M/92/2018, and that the motion has not been heard, and he went further to file this application without withdrawing his earlier application at the trial Court.

It is also deposed to the fact that the judgment Debtor/applicant is deliberately filing frivolous court process with the aim of preventing the judgment creditor/respondent from reaping the benefit of his judgment.

The counsel to the respondent in his written address adopted the issue already formulated by the counsel to the applicant, to wit:

Whether this Honourable Court ought to grant this application in the circumstances of this case?

The counsel therefore submitted that by the applicant filling an application at the lower Court seeking to set aside the judgment delivered on the 28th July, 2018 and later to have filed another application to this Court for extension of time to appeal without withdrawing the earlier one is an abuse of Court process and he cited the case of **Igbinedion V. F. R. N. (2004) All FWLR (pt 736) (citation not properly supplied)**. He also cited the case of **Okorochoa J. P. S. P. (2015) ALL FWLR (pt 786)** (citation not properly supplied) to the effect that an abuse of Court process, and is simply the misuse of court process, he further cited the case of **Ogburu V. Uduaghan (2014) ALL FWLR (pt 719)** (citation not properly supplied) to the effect that an abuse of Court process lies in the multiplicity and the manner employed for the exercise of the right, and further submitted that the action of the applicant is a clear abuse of Court to process, and he then urged the Court to dismiss this application for it being an abuse of the

process of the court, hence it is the duty of the Court to evaluate the amounts on the two affidavits of both the applicant and on the respondent in this regard.

Now having summarized affidavits of both parties and their written submissions, let me adopt the issue already formulated with a view for this Court to resolve in one way or the other, to wit:

Whether this Honourable Court has the power to grant the application in the circumstances of this case?

Let me observe that the applicant herein applied for both a leave to appeal and an order for extension of time within which to file the appeal, and I believe there is a difference between the two, see the case of **Igwebuike V. Okoye (2018) All FWLR (pt 953) p. 150 at 160 paras. D-G** where the Court of Appeal Enugu Division held that there is a world of difference between leave to appeal and leave for extension of time to appeal which is leave to appeal out of time. An application for leave to appeal presupposes that appeal, by the relevant act, is not as of right, and the appellant therefore seeks permission of the Court to file an appeal. On the other hand, extension of time to appeal presupposes that the statutory time for an appeal as of right has expired, and so the appellant seeks permission of the Court to extend time within which to appeal. Now, in the instant case, the counsel sought for both, and to my mind, the counsel has a wrong impression in that regard, this is because by virtue of section 71 of the District Court Act Cap 495 (Abuja) LFN 1990, a party who is dissatisfied with any judgment or order of a District Court may appeal to the High Court of the Federal Capital Territory, Abuja, and by this it could be inferred that any party, as of right, may appeal to High Court of the FCT if he is not satisfied with any decision of a District Court within the FCT, and We therefore, so hold, and to this, the prayer made by the appellant seeking leave to appeal goes to no issue.

Now coming to the prayers No. 1, 3, and 4 made by the applicant as to extension of time within which to file an appeal out of time, the applicant has the duty to place enough materials before the Court to warrant for the discretion to be exercised in his favour, this is by showing:

- a) Good and substantial reasons for failure to appeal within the prescribed periods;

b) Grounds which prima facie show good cause why the appeal should be heard. See the case of **Becay International (Nig) Ltd V. Fidelity Bank Plc (2018) All FWLR (pt 948) p. 1358 at pt-1372-1373 paras. G-B**

Let me consider the provision of Order 50 Rule I of the rules of this Court which provides:

“Except for interlocutory appeals which shall be brought within 15 days, every appeal shall be brought by notice of appeal lodged in the lower Court within 30 days of the decision appealed from and served on all other parties affected by the appeal.”

By this, it could be inferred to mean that any appeal other than interlocutory appeal shall be brought within the period of 30 days from the date of the decision.

In computing time in this regard, recourse has to be had to the provision of Order 49 Rule I of the rules of this Court, to the effect that the day on which the order is made or on which the event occurs is excluded or that where the last day of the period is a holiday the time shall continue until the end of the next day following which is not a public holiday.

Now going by the record of the Court, which it is bound to look at, the judgment of the District Court was entered on the 20th day of July, 2018, while this application for extension of time within which to appeal out of time was dated the 20th day of November, 2018 and was filed on the 27th day of November, 2018, this is barely four months after the delivery of the judgment. This clearly and unequivocally shows that the applicant was out of the period for about three months or thereabout.

Thus, in this application, the applicant is placed with the burden to place good and substantial reason for failure to appeal within the prescribed period, and that the grounds which prima facie show good cause why the appeal should be heard. Therefore, in considering these, both must co-exist to warrant the Court to grant the application, and until and unless the applicant scales through the first hurdle before regard should be given to the second requirement. In the circumstances, the applicant is certainly out of the prescribed period given to him by the rule of this Court to file an appeal against the judgment of the District Court

delivered on the 20th July, 2018 even though the length of time notwithstanding.

Now, the reason given by the applicant that caused him to delay the filing of the notice of appeal was because the certified true copy of the record of proceeding was not given to him as the District Court Judge was on leave. The question that arose is whether this serve as a good as substantial reason for failure to appeal within the prescribed period?

Thus, even though the counsel made heavy weather on that ground that he was not given the record of proceeding within time, it is not in the affidavit in support of this application as to what time did he apply for the record and the time it was given to him. It was held in the case of **Emmanuel V. Gomez (2009) All FWLR (pt 466) p. 1996 at pp 2003-2004 paras. H-B** by the Court of Appeal, Lagos Division when a counsel is dissatisfied with a ruling of the Trial Court, rather than wait for a certified true copy of the ruling appealed against, he should with dispatch file grounds of appeal or an omnibus ground of appeal within the prescribed period, and when eventually he obtains the certified true copy of the ruling, such leave to file additional or modified or amended grounds of appeal. The above is the right procedure and it is borne out of the fact that certified true copies of rulings are usually difficult to obtain within the time prescribed for appeal. The delay in obtaining the certified true copy of the ruling appealed against is not a good reason for a Court to exercise its discretion to extend time to appeal. In the instant case, the applicant did not take any step to file grounds of appeal or an omnibus ground of appeal within the prescribed period, and to this, this reason for not obtaining the certified true copy of the judgment does not serve as a good and sufficient reason for this Court to exercise its discretion in his favour, and We therefore so hold.

The counsel to the applicant alluded to the fact that the delay in filing this process is neither out of the applicant's making nor as act of her disregard to the Honourable Court but majorly to the delay in getting the CTC of the judgment of the Court. By this, it could be inferred that the Court should not visit the sin of the Registry on the applicant in not providing the CTC of the judgment on time. Still to my mind, that would not have prevented the applicant from filing the grounds of appeal or omnibus grounds of appeal within the prescribed period, as was held in

the case of **Emmanuel V. Gomez (supra)**. In a nutshell, where no sufficient reason for the delay by an applicant, no such indulgence of an extension of time would be granted.

To our mind also, where the applicant fails to place before the Court good and sufficient ground, then there is no need for this Court to dissipate its energy in considering the second requirement of placing grounds which prima facie show good cause why the appeal should be heard as the first requirement has not been fulfilled satisfactorily, and We therefore, so hold.

Where the purpose of the rules is to provide a time-table for conduct of litigation, there must be strict compliance with the rules, because to do otherwise will defeat the purpose of the rules, see the case of **Adegbola V. Idowu (2018) All FWLR (pt 948) p-782 at 808 paras F-G**. It is against this backdrop that we have come to the conclusion that the applicant has not placed sustained, cogent, convincing and sufficient reason to warrant this Court to grant his application, and it is hereby refused.

Signed:

Signed

HON. JUSTICE M. E. ANENIH
(Presiding Judge)

HON. JUSTICE B. HASSAN
(Hon. Judge)

Appearances.

David Chinedu Okoye – Appellant.

J. S Odeh Esq holding the brief of S. O.

Achugamuonye Esq for the Appellant.