IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE APPELLATE DIVISION
HOLDEN AT ABUJA

FRIDAY, MAY 17, 2019

BEFORE THEIR LORDSHIPS:

HON. JUSTICE PETER OYIN AFFEN - PRESIDING JUDGE
HON. JUSTICE ASMAU AKANBI-YUSUF - JUDGE

APPEAL NO: FCT/CVA/368/2019
MOTION NO. M/56/2019

BETWEEN:

MRS GODWIN NWANKWO … … APPELLANT/APPLICANT

AND

AGHEDO DONALD … … RESPONDENT

R U L I N G

BY A MOTION ON NOTICE dated 2/4/19 but filed on 29/4/19, the Appellant/Applicant herein prayed the Court for the following reliefs:

"1. AN ORDER granting leave to the Applicant to compile and transmit the Record of Proceedings from the lower court out of time.

2. AN ORDER granting leave to the Applicant to amend his (sic) notice of appeal by bringing forth other grounds of appeal.

3. AN ORDER deeming the amended notice of appeal as attached to be proper before the court, the same having been filed and reserved (sic).

4. That J. U. Okeh Esq. who is personally handling this matter informed me in our office on the 18th day of April 2019, at about 3:00pm of the facts that I depose to in this affidavit and I verily believe him (sic)."

One *Silas Igbe* [a Litigation Secretary with *Determination Chambers*, being the Law Office of *J. U. Okeh, Esq*. of counsel for the Appellant/Applicant]

deposed to a 16-paragraphed affidavit in support of the motion wherein it is averred *inter alia* that while the Appellant/Applicant was waiting for the lower court to prepare and transmit the record of proceedings, her counsel *J. U. Okeh, Esq.* who is personally handling the matter took ill and was on admission at the University of Abuja Teaching Hospital, Gwagwalada" from 7th February to 3rd April 2019 as shown in the Medical Report annexed as Exhibit C; that learned counsel was unable to pursue the record of proceedings and/or the substantive appeal until now as he was still recuperating and had not resumed practice even after being discharged; that it is necessary to amend the notice of appeal to incorporate further grounds of appeal in the terms of Exhibit D so that the matter may be dispensed with once and for all; and that granting this application will not prejudice the Respondent who is ready for the appeal and has filed a cross appeal.

The Respondent filed an 11-paragraphed counter affidavit dated 6/5/19 in opposition to the application, wherein it is deposed *inter alia* that it was after his counsel had filed Motion No. M/45/19 to strike out Appeal No. CVA/362/19 that the Appellant filed the present motion seeking to transmit records out of time and amend notice of appeal; that the appeal number of the amended notice of appeal is CVA/119/19, which is different from the original notice of appeal with Appeal No. CVA/362/19; that both the original notice of appeal and the amended one are defective in structure and substance as the sole ground in both notices of appeal is vague and cannot be amended; that the claim that appellant's counsel was ill is not genuine as one *Lucky Ikpeahior, Esq.* who was handling the matter for him when he was said to be ill previously could have continued in his absence; and that striking out the two notices of appeal will best serve the interest of justice.

At the hearing on 7/5/19, *J. U. Okeh, Esq.* of counsel for the Appellant/Applicant relied on the 16-paragraphed supporting affidavit and adopted the written address. He referred to Order 50 Rule 17(20) of High Court of the Federal Capital Territory, Abuja (Civil Procedure) 2018 and urged the court to grant the application.

In the same vein, *Julius Angbashim, Esq.* of counsel for the Respondent [who did not file any written address but sought and obtained the leave of court to oppose the application orally] relied on the 11-paragraphed counter affidavit and insisted that the original notice of appeal is incompetent and cannot be amended. He contended that whereas the appeal is supposed to be against a final judgment of the lower court, the grounds of appeal shows that the appeal is against a 'Ruling'; that the sole ground of appeal which is vague or ambiguous, argumentative and alleges error of law without particulars cannot be amended, citing ***JOHN v BLACK [1998] 4 NWLR (PT. 90) 539, ASR CO. LTD v OBIASA & CO [1997] 11 NWLR (PT. 537) 145 AT 147 -148, HONIKA SAWMILL LTD v HOFF [1994]2 NWLR (PT. 326) 252*** and ***KHALIL v YAR'ADUA [2003] 16 NWLR (PT. 847) 446***; and that there is no prayer for extension of time to transmit records out of time. The court was urged to dismiss the application.

Now, a cardinal principle of our jurisprudence is that courts of law exist to decide the rights of parties before it and not to punish them for errors or mistakes they may make in the conduct of their cases by deciding otherwise than in accordance with their rights. A necessary corollary of the above principle is that a party may at any stage of the proceedings before judgment alter or amend his processes as may be necessary for the purpose of determining the real question(s) in controversy in a case. See ***ADEKEYE v AKIN-OLUGBADE [1987] 3 NWLR (PT. 60) 214*** (per *Oputa, JSC*). The courts

therefore generally lean towards granting an amendment save in situations where: (i) the amendment sought will occasion injustice to the other party; (ii) the applicant is acting *mala fide*; or (iii) by his blunder the applicant has done some injury to the respondent which cannot be compensated by costs or otherwise. See ***OJAH v OGBONI (1976) 1 NMLR 95 at 99, KODE v YESUFU [2001] 4 NWLR (PT. 703) 392, AJAKAIYE v ADEDEJI [1990] 7 NWLR (PT. 161) 192*** and ***ADELAJA v ALADE [1994] 7 NWLR (PT. 358) 537.*** Indeed, it has been held that an amendment may be granted even if it is in consequence of an objection raised by the adverse party. See ***ITA v. DADZIE [2000] 4 NWLR (PT. 652) 168 at 181.***

In the case at hand, the present application seeks to amend the Notice of Appeal dated 27/12/18 but filed on 10/1/19, which in the Respondent's estimation is incompetent for being argumentative, vague and alleging error of law without furnishing any particulars. The opening paragraph of the said Notice of Appeal indicates that the Appellant is "*dissatisfied with the judgment/decision of the Upper Area Court sitting at Gwagwalada presided over by Hon. Alhassan M. Kusherki on 11th December 2018*", but Paragraph 2 says the complaint is about "*the whole Ruling of the Court below*". Crucially, Paragraphs 3 and 4 read thus:

"3. GROUNDS OF APPEAL

The learned trail (sic) Judge erred in law in giving a Ruling that is against the fundamental principles of law.

PARTICULARS

Basic principles of law was not considered by the court when it gave the ruling.

Further ground will be supplied on the receipt of a copy of the Ruling and record of proceedings.

4. RELIEFS SOUGHT:

To allow the appeal and set aside the judgment of the Upper Area Court sitting at Gwagwalada."

Paragraphs 1 and 2 of the "Amended Notice of Appeal" dated 26/4/19 but filed on 30/4/19 [which the Appellant/Applicant has prayed us to deem as properly filed and served] is essentially a repetition of the analogous paragraphs of the original notice of appeal, but Paragraph 3 reads as follows:

"3. GROUNDS OF APPEAL

The learned trail (sic) Judge erred in law in giving a Ruling that is against the fundamental principles of law.

1. The Court lack (sic) jurisdiction to entertain the matter."

It cannot escape notice that there are no paragraphs dealing with "reliefs sought" or "parties directly affected by the appeal", etc., in the "Amended Notice of Appeal", even as there are several inconsistencies and inaccuracies. The learned counsel for the Respondent is perfectly right to complain of the indiscriminate reference by the Appellant/Applicant to 'Judgment' and 'Ruling' in the notices of appeal as though they mean one and the same thing in law. This is no doubt a demonstration of slovenliness on the part of learned counsel for the Appellant/Applicant, which is quite distasteful. However, we fail to see how the Respondent has been misled thereby, especially when it is borne in mind that the courts exist to do justice and not to supervise a game of forensic dialectics or to punish litigants for the errors of their solicitors or counsel. See ***HART v IGBI [1998] 10 NWLR (PT. 568) 28.***

Be that as it may, it occurs to us that an application for amendment presupposes the existence of a valid court process sought to be amended. A notice of appeal is an originating process; the *fons et origo* of an appeal. Whilst amendment affords a party the opportunity to correct errors or blunders in a court process, where a court process, particularly an originating court process, is fundamentally defective *ab initio*, it is incompetent and cannot be cured by amendment. See ***UNION BANK PLC v ALHAJI LAWAL (2011) LPELR – CA/L/518/06,*** as well as ***OKOLI v AJOSE [1994] 8 NWLR (PT. 362) 300*** where it was held that an incompetent notice of appeal cannot be amended. The obvious logic is: "*You cannot put something on nothing and expect it to stay there. It will collapse*." See decision of the Privy Council in ***UAC v MACFOY (1962) AC 152 at 160*** (per *Lord Denning*) which was adopted by the Supreme Court in ***AKPENE v BARCLAYS BANK (1977) 1 SC 47 at 59.*** But the point that must be vigorously emphasised is that the question of whether or not a notice of appeal is competent and liable to be struck out is determined by reference to the statute or applicable rules of court under which the appeal is brought.

Generally, grounds of appeal that are vague or general in terms are not permitted. See ***JOHN v BLACK supra.*** A ground of appeal alleging error of law or misdirection is required to be supported by particulars set out separately or imbedded in the ground itself, in order to give notice to the other side of the case it has to meet in on appeal. See ***KOYA v UNITED BANK FOR AFRICA [1997] 1 NWLR (PT. 481) 251*** and ***MINISTER FOR WORKS v TOMAS (NIG) LTD [2002] 2 NWLR (PT. 752) 740.*** However, a party who is yet to receive a copy of the decision he is desirous of appealing against is at liberty to file a notice of appeal containing only an omnibus or general ground of appeal alleging either that 'the decision is

against the weight of evidence' or that 'the decision is against fundamental principles of law' without the necessity of furnishing particulars, but merely indicating that further grounds of appeal will be filed upon receipt of the record of proceedings. Because appeals are governed by statute, which equally prescribe the time with which to file same, the omnibus ground of appeal enables intending appellants to lodge their appeals within time. The omnibus ground of appeal is always treated as an exception to the general rule that prohibits grounds of appeal that are vague or general in terms. See, for instance, **Order 6 Rule 3 of the Court of Appeal Rules, 2011** which provides thus:

> "3. Any ground which is vague or general in terms or which discloses no reasonable ground of appeal shall not be permitted, save the general ground that the judgment is against the weight of the evidence, and ground or appeal or any port thereof which is not permitted under this Rule may be struck out by the Court of its own motion or on application by the Respondent."

The present appeal is governed by **Order 50** of the High Court of the Federal Capital Territory, Abuja (Civil Procedure) Rules 2018, (hereinafter "CPR 2018'), which contains ample provisions that would save grounds of appeal that would otherwise have been defective. In this connection, the provisions of our **Order 50 Rules 17 and 19** are quite instructive and bears reproducing for purposes of clarity:

> 17. (1) No objection on account of any defect in the form of stating any ground of appeal shall be allowed, unless the court is of opinion that the ground of appeal is so imperfectly or incorrectly stated such that it is insufficient to enable the respondent to enquire into the subject-matter or to prepare for the hearing.
>
> (2) Where a court is of opinion that an objection to any ground of appeal ought to prevail, it may, allow the ground of appeal to be amended upon such terms and conditions as it may think just.

19. No objection shall be taken or allowed, on an appeal, to a notice of appeal which is in writing or to any recognizance entered into under this Order for the due prosecution of the appeal for any alleged error or defect, but if the error or defect appears to the court to be such that the respondent on the appeal has been thereby deceived or misled, it shall be lawful for the court to amend it, and, if it is expedient to do so, also to adjourn the further hearing of the appeal, the amendment and the adjournment, if any, being made on such terms as the court may think just.

The above provisions of the Rules of this Court are clear as crystal and admit of no ambiguity. Our Rules demand, nay enjoin, a liberal approach towards perceived defects in notices and grounds of appeal with a view to ensuring that appeals are determined on their merits rather than on the basis of stultifying legal technicalities. We are therefore not persuaded by the arguments forcefully pressed by counsel on behalf of the Respondent that the sole ground of appeal contained in Paragraph 3 of the Notice of Appeal dated 27/12/18 but filed on 10/1/19 [which is in the nature of an omnibus ground of appeal] is incompetent for being vague and without particulars such that it cannot be amended. It has not been demonstrated that the amendment sought will occasion injustice to the Respondent; or that the Appellant/Applicant is acting *mala fide* or has by her blunder done some injury to the respondent which cannot be compensated by costs or otherwise.

We equally do not agree with the contention of Respondent's counsel that Prayer 1 seeking leave to compile and transmit record of proceedings from the lower court out of time should not be granted. We reckon that the depositions in the supporting affidavit as well as the Medical Report in Exhibit C showing that the learned counsel for the Appellant/Applicant was on admission at the University of Abuja Teaching Hospital, Gwagwalada

from 7th February to 3rd April 2019 sufficiently explains why the record of proceedings were not compiled and/or transmitted within the period prescribed in Order 50 Rule 4, CPR 2018.

We accordingly exercise our unimpeded discretion in favour of the Appellant/Applicant and record an order granting her leave to compile and transmit record of proceedings from the lower court out of time.

We equally grant leave to the Appellant/Applicant to amend her Notice of Appeal, but refuse Prayer 3 for a deeming order. In its place, we order that the Appellant/Applicant shall file and serve on the Respondent a proper Amended Notice of Appeal within seven (7) days hereof.

There shall be no order as to costs.

PETER OYIN AFFEN
Presiding Judge

ASMAU AKANBI-YUSUF
Hon. Judge

Counsel:

J. U. Okeh, Esq. for the Appellant/Applicant.

Julius Angbashim, Esq. for the Respondent.