

**IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY**  
**IN THE ABUJA APPEAL JUDICIAL DIVISION**  
**HOLDEN AT MAITAMA COURT NO. 15**  
**BEFORE HIS LORDSHIPS: HON. JUSTICE JUDE O. OKEKE (PRESIDING JUDGE)**  
**HON. JUSTICE D.Z. SENCHI (JUDGE)**

**DATED:-24/11/2015**

**APPEAL NO.CVA/8/2015**

**BEWTEEN:**

**MR. JAMES OGBODO-----**

**APPELLANT**

**AND**

**MRS. MARTHA SULE-----**

**RESPONDENT**

## **RULING**

**(DELIVERED BY HON. JUSTICE D.Z. SENCHI)**

The Appellant (the Defendant at the trial Court) by a notice of appeal dated the 4<sup>th</sup> March, 2015 and filed on the 5<sup>th</sup> March, 2015, being dissatisfied with the decision of the Chief District Court 2 presided by His Worship S.O Adeniyi holden at Wuse Zone 2, Abuja contained in the judgment delivered on the 18<sup>th</sup> February, 2015 appeal to this Court. The grounds of appeal are as follows:-

### **GROUND ONE**

That the Lower Court erred in law when it entered judgment in favour of the Plaintiff who has not issued and served adequate statutory notices to the Defendant before instituting this suit.

## **PARTICULARS**

- (1) The trial Court order for the immediate vacant possession of the shop no. 4, Block B21, section B, Wuse Modern Market Abuja without evaluating whether the notice to quit and notice of tenant owners intention to apply to recover possession were issued or not.
- (2) The letter of authority was not given to the person who was not the valid agent of the Plaintiff/Respondent by the land lord to issue notice to tenant of owner's intention to apply to recover possession.

## **GROUND TWO**

That the Court erred in law when it did not serve the Defendant notice of judgment contrary to Order XXV of District Court Rules before proceeding to deliver the judgment.

## **PARTICULARS**

The date of judgment slated by the Court fell on the period the judicial staff workers were on strike and the Court fixed a new date having notify the Plaintiff of the new date and refused to notify the Defendant.

## **RELIEF SOUGHT**

An order of this Court setting aside the judgment of the Chief District Court presided by His Worship (Mrs.) S.O Adeniyi delivered on 18<sup>th</sup> February, 2015 and its place allow the appeal.

The notice of appeal and the record of proceedings together with the Appellant's brief of argument was served on the Respondent's Counsel. On

service of the Appellant's notice of appeal, the transmitted record of proceedings and Appellant's brief of argument on the Respondent, the Respondent, by a notice of preliminary objection dated the 6<sup>th</sup> of October, 2015 and filed on the 16<sup>th</sup> October, 2015, challenged the competence of the notice of appeal on the following grounds:-

- (1) That there is no valid and or competent notice of appeal before this Court.
- (2) That the Appellant filed his brief of argument outside the prescribed time.
- (3) None- compliance with the provision of Rule 10 of the Rules of Professional Conduct for Legal Practitioners, 2007.
- (4) The appeal was not initiated by due process of law.
- (5) That appeal is incompetent.

The Respondent further filed his Respondent's brief of argument on the 16<sup>th</sup> October, 2015. Both the notice of preliminary objection and the Respondent's brief of argument was duly served on the Appellant's Counsel on the same 16<sup>th</sup> October 2015.

Thereafter, the Appellant filed on the 26<sup>th</sup> October, 2015 Appellant's reply to the Respondent notice of preliminary objection. Thus, issues having been joined by the Parties in this notice of preliminary objection, on the 17<sup>th</sup> November, 2015, Counsel for the respective parties adopted their brief of arguments. Ruling was then adjourned today, the 24<sup>th</sup> November, 2015.

The Respondent's Counsel, in his brief of argument did not distill issues for determination on the competence of the notice of appeal of the Appellant. However, at paragraphs 3.3 -3.8 of pages 5 and 6 of his brief of argument,

learned Counsel submitted that it is trite law, where a notice of appeal is filed it carries the heading of the Superior Court and not the same Court which judgment is been challenged.

Counsel for the Respondent submitted to the effect that the heading of the notice of Appeal poses a serious jurisdictional problem because it must be headed in the Court or Tribunal that has jurisdiction to hear the appeal. Counsel then refers this Court to the Blacks Law Dictionary, 9<sup>th</sup> edition at page 1166 on the definition of a notice of appeal. He also contended that the notice of appeal forms part of the records of this Honourable Court and he relied on section 122(2) of the Evidence Act, 2011 that this Court should take judicial notice of same. He also refers this Court to pages 94-96 of the complied records containing the notice of appeal. Counsel for the Respondent then relied on the cases of ***UDUAGHA V NWAGWUGWU, (2013) LPELR 21819 (CA), AKINLOYE V ADELAKUN, (2000) 5 NWLR (pt657) page 530 at 535, BILLMAN DAM BAM V ARDOLEL, (2000) 11 NWLR (pt 678) page 413.***

Furthermore, at paragraphs 3.7 and 3.8 of the brief of argument of the Respondent, learned Counsel submitted that the Appellant's notice of appeal is not a mere irregularity but it is fundamental and goes to the root of the case. He relied on the cases of ***OKON V IBOM, (2010) ALL FWLR (pt 626) page 607 at 611 and MCFOY V U.A.C (1962) A.C 152.***

On the next issue for determination, at paragraphs 3.9- 3.15 of pages 6-8 of the Respondents' brief of argument, Counsel submitted to the effect that by order 43 rule 10, rules of this Court, the Appellant is to file his brief of argument within twenty – one (21) days after the transmission of the records of appeal. Counsel then stated that in the instant case the Appellant

transmitted records on the 14<sup>th</sup> April, 2015 but filed his Appellant's brief of argument on the 2<sup>nd</sup> of July, 2015, a clear period of three months interval. Counsel then contended that rules of Court are meant to be obeyed and he relied on the case of ***OWNERS, MV ARABELLA V N.A.I .C, (2008) 11 NWLR (pt1097) page 182.***

Furthermore, learned Counsel for the Respondent submitted that the Appellant's Counsel also did not Stamp and Seal the Appellant's brief and all other documents filed in accordance with the mandatory provisions of Rule 10 of the Rules of Professional Conduct for Legal Practitioners, 2007.

He submitted further that it is mandatory for legal practitioners to obtain and affix his Stamp and Seal (approved by the Nigeria Bar Association) on every Court process before same can be filed. Counsel contended that where there is default to affix the said Stamp and Seal, the process even filed shall amount to a nullity and the process is treated as invalid and incompetent. He then argued that when a Court process is declared incompetent it must be struck out. Counsel relied on the case of ***MOBIL OIL (NIG) PLC V YUSUF, (2012) 9 NWLR (pt 1304) page 47 at 56.***

Counsel for the Respondent further submitted at paragraphs 3.16- 3.21 of pages 8 and 9 of the Respondent's brief of argument to the effect that by the use of the words "**SHALL**" in rule 10, Rules of the Professional Conduct for Legal Practitioners, makes it mandatory or compulsory to affix the Stamp and Seal to every process filed by a legal Practitioner. And that where a statute prescribed for doing of a particular thing, no other way can be adopted or cognizable by law. He relied on the cases of ***OKEREKE V YAR' ADUA (2008) 12 NWLR (pt1100) page 95 at 654,PDP V INEC, (2015) 2 WRN 1 at 24,42-43,***

***UGWU V ARARUME, (2007) ALL FWLR (pt377)page 807 at 857, RAYMOND DONGTOE V CSC PLATEAU STATE, (2001) ALL FWLR (pt 50) page 1639 at 1663. And finally AMEACHI V INEC (2008) ALL FWLR (pt407) page 1 at 98 paragraph C-D.***

In conclusion, learned Counsel for the Respondent urged this Court to hold that the instant appeal is incompetent and accordingly be struck out.

The Appellant's Counsel on the otherhand, responded to the Respondent's notice of preliminary objection by narrowing the issues to three as follows:-

- (1) That the notice of Appeal filed by the Appellant is incompetent in that it was headed in the District Court. On this issue, learned Counsel referred to order 43 Rule 4, Rules of this Court and submitted that the notice of appeal from District Court to High Court must be headed in the District Court.
- (2) On the issue of failure of Appellant's Counsel to append his Stamp and Seal in the Appellant's brief of argument; he submitted that the Appellant's Counsel is a qualified Legal Practitioner of the Supreme Court of Nigeria. He therefore contended that as at the time Appellant's Counsel filed the Appellant's brief of argument, the issue of Nigeria Bar Association Stamp and Seal is not in operation. He therefore urged this Court to discountenanced the Respondent's objection.
- (3) In respect of the Appellant's brief of argument filed outside the 21 days as prescribed by the Rules of this Court, learned Counsel for the Appellant submitted that the issue has been taking care of by the Appellant.

In conclusion therefore, Appellant's Counsel urged this Court to dismiss the Respondent's preliminary objection and determine this suit on merit.

To resolve the notice of preliminary objection as filed by the Respondent's Counsel, this Court will narrow the issues as simply put by the Appellant's Counsel in his reply to the Respondent's Notice of preliminary objection. The first issue is whether the notice of Appeal filed by the Appellant is incompetent in that it was headed in the District Court.

It is the contention of the Respondent's Counsel that the wrong heading of the notice of appeal affects the initiation of this appeal and the jurisdiction of this Court to hear and determine the appeal.

Now the FCT High Court (Civil Procedure) rules 2004 regulates the procedure of appeals from the District Courts. Order 43, Rules 1 and 2, Rules of this Court provides as follows:-

"43 (1) 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 30days of the decision appealed from and served on all other parties affected by the appeal.

2 (1) The notice of appeal shall set out the reference number of the proceedings in which the decision complained of was given, the names of the parties, the date of the decision and the grounds for the appeal in full.

(2). Where the Appellant complains only of a part of the decision, the notice of appeal shall specify the part complained of; otherwise the appeal shall be taken to be against the decision as a whole.

(3) The notice of appeal shall give an address within Federal Capital Territory, Abuja, where the Lower Court appealed from is situated to which notice may be sent for the Appellant by registered post.

(4) The notice of appeal shall be in form 97, as in the Appendix and may be varied to suit the circumstances of the case but so that no variation of substance shall be made.”

The above provisions regulate the procedure of appeals from the Magistrate Court or District Court as the case may be to this Court. And in direct answer to the objection of the Respondent to the effect that the Appellant failure in heading the notice of appeal in this Court but headed same in the District Court, by order 43 (2) (4) of the FCT High Court (Civil Procedure) Rules, it provides that notice of appeal shall be in form 97, as in the appendix. And a close look at form 97, the precedent forms provided for notice of appeal (Civil), it is to be headed in the Magistrate Court or District Court as the case may be. However, order 43 (2) (4) also provides that the notice of appeal shall be in form 97, as in the appendix and may be varied to suit the circumstances of the case.

Be it as it may, it has been severally held by the Appellate Courts that wrong heading of an appeal, as in this instant case is an irregularity that can be condoned by the Court. See **SETRACO (NIGERIA) LTD V JOSEPH KPAJI, (2013) LPELR 20839 (CA) MAKURDI JUDICIAL DIVISION**. Also in the case of **ONWUNALI V THE STATE**, the Supreme Court of Nigeria per ESO JSC (of blessed memory) held that “this Court has in the case of **NOFIU SARA KATU V NIGERIAN HOUSING DEVELOPMENT LTD (1981) 4 SC 26** overruled **ADDIS ABABA V ADEYEMI, (1976) 12 SC 51** and since then technical grounds like wrong heading of an appeal does not fetter an appeal on merit.”

In the case of **CLEV JOSH LIMITED V TOKIMI (2008) 13 NWLR (pt 1104) page 422**, the Court of Appeal sitting in Calabar Division equally held, “ on the basis

of the supreme Court decision in *SARAKATU* (supra) the wrong heading of the notice of appeal herein can be treated as an irregularity that can be condoned. Consequently, it is settled that wrong heading of a notice of appeal, though amounts to a blunder, however does not warrant the striking out of the appeal which otherwise should be heard on the merit.”

However, in the case of ***CATHERINE OKON V PETER IBOM, (2010) LPELR, 4722***, the Court of Appeal, the same Calabar Division held as follows:-

“A notice of appeal is an originating processes and its heading affects the jurisdiction of the Court to entertain the appeal. The Court cannot entertain a matter headed in Court Below. This is not a mere irregularity. It is a fatal defect in the initiation of the appeal which is rendered incompetent and it is hereby struck out.”

See also ***UWQZURIKE V A.G. FEDERATION, (2007) 40 WRN 87***.

In the recent case of ***NATHANIEL AGUNBIADE AND A.P.C V BUSAYO OLWWOLE OKE***, unreported appeal **NO.CA/AK/EPT/HR/68/2015** delivered on the 2<sup>nd</sup> September, 2015, the Court of Appeal Akure Division hearing an appeal from the National and State Houses Assembly Election Tribunal, Osogbo Osun State, where an Election Petition was headed thus:- “ The Presidential and Assembly Election Tribunal “ in which the Tribunal relying on the cases of ***UWAZURIKE V AG FEDERATION*** (supra), ***OKOR V PETER IBOM*** (supra) held that the Election petition was incompetent. On appeal to the Court of Appeal, the Court of Appeal held that wrong heading with reference to Presidential and Assembly Election Tribunal instead of the National and State Houses of Assembly is a mere irregularity.

Thus, in the instant case, even though the notice of appeal was headed in the Court below, the Respondent did not suffer any miscarriage of justice. Hence therefore by the decision of the Supreme Court of Nigeria in the case of **SARAKATU V NIGERIA HOUSING DEVELOPMENT**, the none – heading of the notice of appeal in this Court but was done in the Court below is an irregularity and cannot be a ground to set aside the notice of appeal as incompetent. Accordingly the objection of the Respondent’s Counsel on this point is of no moment and it is hereby discountenanced.

Further, the Respondent’s Counsel submitted that the Appellant’s brief of argument was filed outside the 21 days after transmission of the records of appeal contrary to order 43 rule 10 of the FCT High Court (civil Procedure) Rules, 2004.

The Appellant’s Counsel on the otherhand submitted that this issue has been taking care of by the Appellant. The Appellant’s Counsel did not elaborate on his submission.

However, from the records in this appeal, on the 26<sup>th</sup> October, 2015, the Appellant filed a Motion on Notice for an order granting leave to the Appellant to file and serve Appellant’s brief of argument and to deem same as properly filed and served. The application was heard and granted by this Court on the 27<sup>th</sup> October, 2015. This Court therefore agrees with the position of the Appellant’s Counsel and holds the view that the objection is highly misconceived.

The next issue for determination is failure of the Appellant’s Counsel to affix the Nigeria Bar Association (NBA) Stamp and Seal in the brief of argument filed on behalf of the Appellant.

According to the Appellant's Counsel that as at the time he filed his Appellant's brief of argument the issue of Nigeria Bar Association (NBA) Stamp and Seal is not operative.

Now both the Respondent's Counsel and the Appellant's Counsel did not tell this Court the effective date when the Nigeria Bar Association (NBA) Stamp and Seal became operational. In any case the application or affixing of Nigeria Bar Association (NBA) Stamp and Seal was made pursuant to the Rules of Professional Conduct for legal Practitioners, 2007. And by virtue of Rule 10(1), (2) and (3) of the Rules of Professional Conduct, 2007 states that:-

- (1) A lawyer acting in his capacity as a legal practitioner legal officer or adviser of any governmental department of Ministry or any corporation, shall not sign or file a legal document unless there is affixed on any such document a seal and stamp approved by the Nigeria Bar Association
- (2) For the purpose of this rule "legal documents" shall include pleadings, affidavits, depositions, applications, instruments, agreement, deeds, letters, memoranda, reports legal opinions of any similar document.
- (3) If, without complying with the requirements of this rule a lawyer signs or files any legal documents as defined in sub –rule 2 of this rule, and in any of the capacities mentioned in sub –rule (2), the document so signed or file shall be deemed not to have been properly signed or filed."

The above Rules 10 (1) (2) and (3) have been given judicial interpretation by the Supreme Court of Nigeria in the following cases:-

- (1) **MEGA PROGRESSIVE PEOPLES PARTY V INEC AND 3ORS**, unreported SC 665/2015 delivered on the 12<sup>th</sup> October, 2015 and

**(2) MAJ. GEN. BELLO SARKIN YAKI (RTD) AND 1OR V SENATOR ATIKU ABUBAKAR BAGUDU AND 2ORS** in suit NO. SC 722/2015 delivered on the 13<sup>th</sup> November, 2015.

Now in the case of **MAJOR GEN. BELLO SARKI YAKI V SEN. ATIKU BAGUDU**, the Supreme Court per Olabode Rhodes Vivour, JSC, (delivering the judgment of the Court) clarified that there are no conflicts in the decision of the two cases and held as follows:-

“In this appeal this Court says that legal processes without stamp or seal are voidable. That is to say such documents are deemed not to have been properly signed and not that they are invalid such documents are redeemed and made valid by a simple directive by the Judge or the relevant authority at the time of filing the voidable document for erring Counsel to affix Stamp and Seal as provided for in Rule 10 of the legal Practitioner Act.”

It is therefore crystal clear from the above decisions of the Apex Court that failure to affix Stamp and Seal to a legal process does not render the legal process invalid or incompetent but rather the legal process is voidable. And the Court further held in the case of **MAJ. GEN. BELLO SARKI YAKI V SEN ATIKU BAGUDU (supra)** as follows:-

“A voidable legal process is made valid when Counsel affixes the Stamp and Seal to the said legal process.”

Now this Court even though by the doctrine of stare decisis is bound by the decision of the Appellate Courts, the Court reasons also that failure to affix the Stamp and Seal of the Nigeria Bar Association (NBA) should not defeat the cause of justice. Rule 10 Rules of Professional Conduct for legal practitioners, there is no doubt they are designed to check and stop the alarming influx into

the revered profession of fake or quack lawyers masquerading as genuine legal practitioner. And the Nigeria Bar Association (NBA) pursuant to the Rules, the result has started yielding dividend as many quack lawyers that had earlier find their way into the profession and committing illegality have been shown the way out.

Having said the above, when did the Nigeria Bar Association (NBA) Stamp and Seal became operational? The Nigeria Bar Association (NBA) Stamp and Seal became operational on the 1<sup>st</sup> of April, 2015 while the circular of the Honourable, The Chief Justice of Nigeria was issued on the 12<sup>th</sup> day of May, 2015 Ref: NO. NJC/CIR/HOC/171 to all Courts in the Federation for enforcement effective on the 1<sup>st</sup> of June, 2015.

Thus, in the instant case, the Appellant's brief of argument was filed on the 2<sup>nd</sup> July, 2015. Clearly, by the extant provisions of Rule 10 (1), (2) and (3), at the time the Appellant filed the Appellant brief's of argument, the Nigeria Bar Association (NBA) Stamp and Seal had become effective. And the Appellant's Counsel failed to affix his Stamp and Seal to the legal process and this renders the brief of argument filed on the 2<sup>nd</sup> July, 2015 voidable. Consequently, the Appellant's Counsel is hereby ordered to correct his blunders by affixing the Stamp and Seal before this Court would determine the appeal on its merit. The objection of the Respondent's Counsel to declare both notice of appeal and the Appellant brief of arguments as incompetent and be struck out is misconceived.

Accordingly, the Respondent's objection is hereby overruled.

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**HON. JUSTICE D.Z. SENCHI**  
**(HON. JUDGE)**

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**HON. JUSTICE JUDE O. OKEKE**  
**(PRESIDING JUDGE)**